EXHIBIT E

Deposition Transcript of William J. Vigilante, Jr., Ph.D., CPE (03.10.17)

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21:2-12

In The Matter Of:

Estate of Robert J. Glad vs.
Demby, et al

William J. Vigilante, Jr., Ph.D.
March 10, 2017

Media Court Reporting
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Case 2:17-cv-02101-SHL-cgc   Document 124-6   Filed 09/14/18   Page 4 of 52   PageID 3194

Estate of Robert J. Glad vs.
Demby, et al

William J. Vigilante, Jr., Ph.D.
March 10, 2017

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 1        IN THE UNITED STATES DISTRICT COURT
             FOR THE DISTRICT OF MARYLAND
 2                (CIVIL ACTION-LAW)
                        - - -
 3

 4   MARIANNE GARDNER        :NO. 1:13-CV-2473-CCB
     Personal representative :
 5   For THE ESTATE OF       :
     ROBERT J. GLAD          :
 6        Plaintiff          :

 7     vs.                   :
                             :
 8   MARKEITH DORON DEMBY    :
     Et al                   :
 9        Defendants         :

10                      - - -

11           Friday, March 10, 2017
               Media, Pennsylvania
12
                      - - -
13

14        Telephonic deposition of WILLIAM J.

15   VIGILANTE, JR., Ph.D. taken pursuant to notice at

16   the offices of Media Court Reporting, 216 West

17   Front Street, Media, Pennsylvania 19063, on the

18   above date, beginning at approximately 10:11 a.m.,

19   before Joanne H. Gusler, Registered Professional

20   Reporter and Notary Public for Pennsylvania.

21

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Page 2

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 2

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              Demby, Thomas H. Pauls, LLC., and
18            Vernetta Sherman

19

20

21

22

23

24

25        (INDEX at end of transcript.)
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 1

 2      WILLIAM J. VIGILANTE, JR., having been

 3  duly sworn, was examined and testified as

 4  follows:

 5      ---DIRECT EXAMINATION---

 6      BY MR. AKPAN:

 7  Q.  Good morning, Doctor.  Can I call you

 8   Doctor?

 9  A.  Sure.

10  Q.  My name is Imoh Akpan and I represent

11   Markeith Demby, Thomas Pauls, LLC., and Vernetta

12   Sherman in reference to a lawsuit that was

13   originally brought by Robert Glad, but now is

14   being brought by his Estate and his personal

15   representative, Marianne Gardner.

16      Have you ever had your deposition

17   taken before?

18  A.  Yes.

19  Q.  Approximately how many times?

20  A.  It would be 120.

21  Q.  So you're familiar with the process.  But I

22   will go over a few pointers that will make the

23   process easier on both you, me and the court

24   reporter.  First thing's first.

25      Let me finish my question before you
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 1      Dr. Vigilante - Direct

 2   start to answer and I'll do the same courtesy

 3   before I ask you the next question.  Your answers

 4   have to be verbal:  Yeses, noes, complete

 5   sentences.  No shakes of the head or ah-huh or

 6   unh-unhs.

 7      If you need a break at any time, let

 8   us know.  And if you need me to rephrase a

 9   question, I will gladly do so.  Okay?

10  A.  Yes.

11  Q.  Doctor, can you please state your full name

12   and business address.

13  A.  Sure.  William John Vigilante, Jr., 200

14   Pembrooke Circle, "P," as in Paul, E-M, as in

15   Mary, B-R-O-O-K-E, Phoenixville, Pennsylvania,

16   19460.

17  Q.  And that business address is for what

18   business?

19  A.  Vigilante Consulting, LLC., and doing

20   business as Vigilante Forensic.

21  Q.  Understood.  And are you the owner of that

22   business?

23  A.  Yes.

24  Q.  And what is your occupation?

25  A.  I'm the owner/operator of a consulting firm
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1   Dr. Vigilante - Direct
2   dealing with human factors and ergonomics-related
3   issues.
4   Q.   And how long has Vigilante Consulting been
5   in existence?
6   A.   The LLC., was filed in, let's say September
7   maybe, of 2015; Vigilante Forensic started
8   officially October 1st, 2015.
9   Q.   Is it incorporated in Pennsylvania?
10 A.   Yes.
11 Q.   Doctor, can you tell me briefly your
12 educational background from undergraduate through
13 graduate school?
14 A.   Sure. I have a Bachelor's of Science
15 Degree in psychology focusing on cognition or
16 human information processing from the University
17 of Scranton in Scranton, Pennsylvania.
18   I have a Master's of Science Degree
19 and a Doctorate in Ergonomics Psychology from
20 North Carolina University.
21 Q.   And is your Ph.D., is that from North
22 Carolina State University?
23 A.   Yes, sir.
24 Q.   And before you were at Vigilante
25 Consulting, where did you work?

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1   Dr. Vigilante - Direct
2   A.   I worked for a company called Robson
3   Forensic.
4   Q.   And how long did you work there?
5   A.   I started there in July of 2003.
6   Q.   And what was your position while you were
7   there?
8   A.   I had multiple positions. Generally I was
9   considered an associate. I was also the practice
10 group leader for the human factors practice group,
11 and I was the area manager for the Philadelphia
12 office for Robson Forensic from about 2010 till
13 the beginning of 2015.
14 Q.   Was Robson Forensic a regional firm, was it
15 a national firm in terms of the area where they
16 took cases?
17 A.   They took cases from anywhere domestically
18 and internationally.
19 Q.   Approximately how many employees were at
20 Robson Forensic? And when I say, "employees," I
21 mean experts, engineers of that sort.
22 A.   When I left, I'm going to hazard a guess or
23 estimate if that is better. About 63 full-time
24 experts and maybe another 50 part-time independent
25 consultants that were associated with the firm.

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1   Dr. Vigilante - Direct
2   Q.   Are you still associated with the firm as
3   an independent consultant?
4   A.   No.
5   Q.   And how many employees are at Vigilante
6   Consulting?
7   A.   Just myself.
8   Q.   Doctor, can you briefly describe for me any
9   professional associations or teaching experience
10 that you have?
11 A.   Teaching assistance, I was a T.A. in
12 undergraduate for statistics and research methods
13 in graduate school. I didn't have a formal role
14 as teaching but I did teach some classes for
15 professors when they were maybe out on a
16 conference or other activity.
17 Q.   And was that in ergonomics, human factors
18 or statistics?
19 A.   It would have been in human factors. Human
20 factors and ergonomics are synonyms.
21 Q.   And what about professional associations?
22 A.   Sure. I was going to say I didn't finish
23 the question because there were two. I'm a member
24 of the Human Factors and Ergonomic Society. The
25 Illuminating Engineering Society.

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1   Dr. Vigilante - Direct
2   The Transportation Research Board.
3   The American Society of Safety -- excuse me.
4   American Society of Safety Engineers. And I'm a
5   member of the Board of Certification in
6   Professional Ergonomics.
7   Q.   So assuming that I know nothing about human
8   factors or ergonomics, tell me what a human
9   factors expert is.
10 A.   Well, it's person who's an expert and has
11 experience, educational experience, work
12 experience, research experience in the fields of
13 human factors and ergonomics.
14 Q.   And what is the field of human factors and
15 ergonomics?
16 A.   Human factors is basically the science that
17 studies how people interact with or use all
18 different types of products, machines, and
19 systems, like for example vehicles in the roadway
20 system. What we're interested in are people's
21 abilities and limitations with respect to such
22 things as visual perception, perception-reaction
23 time, decision-making, memory, learning, training.
24   Physical abilities and limitations,
25 like strength, anthropometric constraints or

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1   Dr. Vigilante - Direct
2   limitations or ranges. And what we do from an
3   applied standpoint is we apply the knowledge that
4   we develop on those topics to design and the
5   development of systems such as roadway systems,
6   vehicles, consumer products, aviation, the
7   aviation industry and so forth.
8   The goal of human factors is to design
9   and develop products, systems, machines that are
10   easy to use, that are comfortable to use, and that
11   are safe to use for the people that are going to
12   be using, maintaining those systems.
13 Q.   Now, I'm assuming that there's some part of
14   that field of study that is academic or
15   research-based and then you also mentioned sort of
16   an applied or applied science part of it; is that
17   fair to say?
18 A.   It is an applied science, yes.
19 Q.   And in terms of developing designs for the
20   ease of use for particular systems, you're looking
21   at or is it fair to say that you're looking at the
22   user as a sort of general user, but you're not
23   necessarily going specific to each individual
24   person like someone that's seven years old or
25   Jennifer who is six-foot tall as opposed to -- do

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1   Dr. Vigilante - Direct
2   you get the difference that I'm sort of getting
3   to?
4   A.   I think I may understand what you're
5   asking --
6   Q.   Okay.
7   A.   -- and if I can answer, and if that
8   doesn't --
9   Q.   Sure.
10 A.   -- help clarify things, we can try again?
11 Q.   Sure.
12 A.   Human factors both from a research
13   perspective and a design applied perspective is
14   interested in the range of the user group expected
15   to be using the system, so there are systems that
16   are made for the general population.
17   So a subset of the general population
18   would be, for example, drivers between the ages of
19   16 and let's say 90. We're not concerned about
20   designing the driving controls for minors, young
21   children.
22   We're interested in designing the
23   driving controls and the driving seat and so forth
24   for folks that are about 16 up to, you know, 90 to
25   100 years old. And within that population, we

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1   Dr. Vigilante - Direct
2   design for both either fifth to 95th percentile or
3   sometimes first to 99 percentile. So it just
4   depends upon the project and the type of product
5   that you're interested in.
6   There are other systems that are
7   designed for a more constrained group of people.
8   So it just depends on the particular product or
9   system. For general consumer products, the
10   population that we're typically interested in, if
11   it's a consumer product geared to adults, we're
12   interested in the adult population.
13   If it's we use, "worldwide," we're
14   interested in the adult population worldwide. If
15   it's tailored to a specific country, we're
16   interested in the characteristics of the
17   population from that country.
18   If it's a child's toy, we're
19   interested in the attributes of say a four- to
20   six-year-old, if the toy is geared to young
21   children. We're not focused on the abilities and
22   limitations of a senior adult --
23 Q.   Understood.
24 A.   -- so it depends on the project.
25 Q.   Would it be, and again, I want to make some

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1   Dr. Vigilante - Direct
2   general statements so that I kind of get an
3   understanding and you just correct me if my
4   statement is incorrect, that's where I'm going.
5   So would it be fair to say that, I guess, in that
6   study, you are looking at demographics such as age
7   for a particular product but you're not getting
8   down to the particular physical abilities of an
9   individual in your study or in your sort of
10   practice? Is what I'm getting to.
11 A.   Yeah. So typically the data is built upon
12   individuals that are participating and if we're
13   running a particular research study, to gather
14   data on the population of users. So it gets back
15   into things like statistical sampling.
16   You know what your population or
17   subgroup is and then you sample from that group
18   and then you find a performance on a particular
19   trade. Let's say contrast sensitivity or
20   peripheral visual field, which is probably more
21   related to this case.
22   You would bring folks in from a basic
23   science standpoint and test their peripheral
24   visual field. The performance over that test of
25   all the people that -- of your sample will equate

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Dr. Vigilante - Direct

1   Dr. Vigilante - Direct
2 what we term, "the natural curve." So it's going
3 to have a mean, it's going to have standard
4 deviations, and it's going to approximate the
5 normal curve.
6   Based upon that, we can predict where
7 people will fall all across that population
8 somewhere within that normal curve.
9 Q. Understood.
10 A. So from a design standpoint, oftentimes the
11 designers that are building a particular system or
12 a particular vehicle, let's say, will bring
13 individuals into their study and again, they'll
14 try to make it representative of the population of
15 users, and then they'll again apply the
16 statistical techniques to get an idea of what the
17 standard curve of performance will be for whatever
18 they're testing.
19 Q. Now, is there a certification or licensing
20 process for a human factors expert?
21 A. There is a voluntary certification process
22 for human factors and ergonomics and that's the
23 Board of Certification of Professional Ergonomics.
24 Q. Now, you said, "it's voluntary"?
25 A. Yes.

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1   Dr. Vigilante - Direct
2 Q. So and what was the name of that governing
3 body again?
4 A. The name of the organization is the Board
5 of Certification and Professional Ergonomics.
6 Q. Is there a particular reason why it's
7 voluntary?
8 A. Well, for example, in comparison to state
9 engineering requirements or state medical or as
10 you in your field, attorney, to be licensed to
11 practice in a particular state, there's no
12 requirement for a human factors/ergonomics
13 professional at a state or federal level.
14   Now, there are some requirements for
15 different contracts that may require the lead
16 researcher, the lead consultant to have their
17 certification from the Board, a Certification of
18 Professional Ergonomics, but there's not a state
19 or federal requirement.
20 Q. Understood. And when you mean certain
21 contracts, I'm assuming you mean government
22 contracts or something like that?
23 A. It could be government, it could be private
24 industry. It depends on, you know, whoever's
25 offering the contract.

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1   Dr. Vigilante - Direct
2 Q. So it would be fair to say that there's no
3 standardized set of requirements to become a human
4 factors/ergonomics expert?
5 A. Well, from the certification, the board
6 certification, there is. Anybody can hang a
7 shingle and claim that they're a human
8 factors/ergonomics expert, and I do see it
9 oftentimes. And people support that claim in
10 different ways.
11   One of the most common in the field
12 that I'm in and what we're talking about today in
13 accident reconstruction, crash reconstruction, is
14 a, you know, an engineer or a state trooper or an
15 ex-law person will get experience in crash
16 reconstruction; they'll take the two-week or
17 four-week course at Northwestern University and
18 they'll have, you know, one class that spends one
19 hour on human factors of driving and then will try
20 to claim to be a human factors expert.
21   So I think any reasonable person
22 that's gone through an accredited human factors/
23 ergonomics advanced graduate course would have or
24 take issue with somebody claiming to be an expert
25 in human factors when that is their only

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1   Dr. Vigilante - Direct
2 qualification.
3 Q. Understood. What is the certification
4 process by that governing body that you mentioned?
5 A. So the board certification in professional
6 ergonomics require certain things. They require
7 an advanced degree in an accredited or accepted
8 school or university.
9   They require a certain number of years
10 of experience in a field that is directly related
11 to human factors/ergonomic. So you have to have a
12 job description, job title for at least five years
13 that is in ergonomics and human factors.
14   So you can't be a dishwasher or the
15 electrical engineer at a company and then try to
16 apply that as your work experience. You have to
17 provide a body of work, a portfolio of work of
18 design projects that you worked on, research
19 projects that you worked on to the certification
20 board. They send that to their -- a peer review
21 staff that looks at the portfolio to determine
22 whether or not they're legitimate human factor and
23 ergonomics projects.
24   Then if you proceed through those
25 steps, you have to sit for an exam. I think the

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1   Dr. Vigilante - Direct
2 exam is half a day, I don't recall, but it's
3 basically an exam. And then you have to pass that
4 exam with a certain number or percentage of
5 correct answers, and then you become certified.
6   And then to hold your certification,
7 you have to provide the Board with evidence or
8 support that you've had continuing education,
9 whether they be classes, workshops, conferences
10 that you've attended, research that you've done,
11 et cetera.
12 Q. Do you remember when you became certified?
13 A. I believe that I did it in the spring of
14 2015.
15 Q. So before the spring of 2015, would you
16 still have considered yourself a human factors
17 expert?
18 A. Yes.
19 Q. But just not a certified human factors
20 expert?
21 A. I wouldn't have been certified by that
22 board.
23 Q. Gotcha. Gotcha. And you were mentioning
24 that there's some sort of recertification
25 component?

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1   Dr. Vigilante - Direct
2 A. Yes.
3 Q. Is there a timeline: Is it like every two
4 years, every three years? I couldn't remember
5 what you said.
6 A. I don't recall if it's two or three years.
7 Q. And the advanced degree requirement for
8 this governing body, I'm assuming it's in some
9 sort of science or can it be in a range of topic
10 areas for that advanced degree?
11 A. I don't recall the specific requirements.
12 I would think it would be something related to
13 human factors and ergonomics.
14   Now, the Human Factors and Ergonomics
15 Society is this country's largest professional
16 organization for human factors and ergonomics
17 professionals.
18   They have an accreditation for
19 advanced degrees for universities giving advanced
20 degrees. So a school like North Carolina State
21 University has been accredited for, I don't know,
22 since the '80s I think.
23 Q. Okay.
24 A. So a small school that may have a program
25 but that may not be accredited and then wouldn't

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1   Dr. Vigilante - Direct
2 be recognized as an accredited degree in human
3 factors and ergonomics.
4 Q. Gotcha. And your Ph.D. is in psychology,
5 correct?
6 A. It is in ergonomic psychology.
7 Q. Ergonomic psychology, okay. And in terms
8 of the advance degrees or the members of the
9 certified human factors or ergonomic experts, the
10 range of degrees can be psychology, engineering,
11 all sorts of things?
12 A. For the Board of Certification of
13 Professional Ergonomics, I don't recall their
14 requirements, but traditionally human factors/
15 ergonomics programs were either in the psychology
16 department and/or industrial engineering
17 department at the universities.
18   From the, let's say the late '90s
19 onward, computer science departments developed
20 human factors/ergonomics programs. They were
21 focused strictly on human computer interaction
22 which is a subset or a subfield within the human
23 factors and ergonomics so they are the three most
24 likely.
25   You wouldn't find -- be hard-pressed

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1   Dr. Vigilante - Direct
2 to find a human factors program buried within the
3 mechanical engineering or electrical engineering
4 or civil engineering program. Or I should say a
5 human factors/ergonomics curriculum within one of
6 those programs.
7 Q. And Doctor, you would not consider yourself
8 an engineer, correct?
9 A. I am not a professional engineer.
10 Q. Why did you qualify that you're saying that
11 you're not a professional engineer?
12 A. Because there's different definitions of
13 engineer and there's different classifications and
14 qualifications. From a forensic practice where
15 most states require the person holding themself
16 out to be an engineer, to be a professional
17 engineer, I do not fall into that classification;
18 however, for example, when I was with the IBM
19 Corporation, my title was human factors engineer.
20   Back in the beginning days of the
21 field of human factors and ergonomics, the field
22 was known as engineering psychology. So there is
23 some historical use of that term with respect to
24 human factors professionals, but from a
25 professional engineering standpoint, I am not.

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1   Dr. Vigilante - Direct
2   Q. Understood. And Doctor, you are not a
3   licensed physician?
4   A. I am not.
5   Q. Since you're not, do you feel that you
6   would have the expertise to dispute a physician's
7   medical diagnosis?
8   A. Typically I don't get into diagnosis
9   issues. I mean some of my background, I've got
10   more training on anatomy and neurology than any
11   physicians depending upon their subspecialty but I
12   don't do diagnosis.
13   Q. And Doctor, do you consider yourself an
14   accident reconstructionist?
15   A. Well, again, that has a broad range of
16   definitions as well. From our case specifically,
17   the term, "crash reconstruction," typically refers
18   to our cases like ours, typically refers to the
19   gentleman or the person, the woman, I don't want
20   to be sexist or anything --
21   Q. Understood.
22   A. -- but the person that goes out and
23   determines the speed of the crash, the physics of
24   the crash, the dynamics of the vehicle movement,
25   maybe occupant movement within the vehicle during

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1   Dr. Vigilante - Direct
2   the crash, so I don't do that type of work. But
3   technically accident reconstruction is a part of
4   human factors but we're looking at the accident of
5   how it occurred, why it occurred from the stand-
6   point of the people that were involved in the
7   incident.
8   Q. Let's then, I'll use your term of,
9   "crash reconstruction," as opposed to the general
10   term of, "accident reconstruction." Do you
11   consider yourself a crash reconstructionist as
12   you've described it?
13   A. Not as I've described.
14   Q. So then would you feel comfortable then
15   disputing the conclusions of a crash
16   reconstructionist? Do you think you would have
17   that basis or that expertise to do so?
18   A. It depends on their conclusions.
19   Q. How about mathematical conclusions?
20   A. Again it depends on the conclusions and
21   what they're trying to mathematically prove.
22   Q. Would you dispute a crash
23   reconstructionist's conclusions about distances or
24   measurements taken at the scene of an accident?
25   A. It depends. If I was out there and I took

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1   Dr. Vigilante - Direct
2   measurements that differed from the other experts,
3   then certainly I would stand by my work.
4   Q. Understood. Doctor, the next set of
5   questions I'm going to ask you about the amount of
6   times or instances where you've been qualified as
7   an expert in litigation matters --
8   A. Okay.
9   Q. -- do you understand that? Okay. Do you
10   know offhand or independently how many times
11   you've been qualified as a human factors or
12   ergonomics expert in litigation in the State of
13   Maryland?
14   A. I've testified in trial at least twice, if
15   not, three times in the State of Maryland as a
16   human factors and ergonomics expert. I've been
17   through at least one Daubert motion in the State
18   of Maryland in federal court and was found -- the
19   motion was dismissed.
20   So whatever the defense was in that
21   case was trying to argue was not agreed to by The
22   Court. I don't recall any other Daubert motions
23   in the State of Maryland.
24   Q. Understood. And do you remember how long
25   ago that Daubert motion was filed?

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1   Dr. Vigilante - Direct
2   A. I can give maybe an estimate of --
3   Q. (Nods head.)
4   A. -- let's say 2008-2009 time frame.
5   Q. Gotcha. And do you know if that case was
6   in federal or state court in Maryland?
7   A. It was federal court. And just to -- I
8   know I'm sure in Maryland state court if they
9   apply Daubert or Frye or another --
10   Q. Understood. So I understood your reference
11   to Daubert as someone, generally speaking,
12   challenging whether or not you were qualified to
13   testify. I wasn't testing your knowledge of case
14   names or anything like that.
15   A. But only in federal court. Yeah.
16   Q. Understood. How many times would you say
17   you've testified as a human factors expert in a
18   trial or at a trial?
19   A. I think it's maybe 27, 28 times.
20   Q. Now --
21   A. I have to -- my estimate for testifying in
22   the State of Maryland, I think, is three or four.
23   I forgot one criminal case that I testified in
24   Maryland a number of years ago.
25   Q. Now, I know you've provided a case list and

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1   Dr. Vigilante - Direct
2   I don't know if, I think that case list was
3   probably -- do you think that case list covers the
4   28 times you testified?
5   A. No. It was only a four-year list that I
6   keep.
7   Q. Do you know offhand how many times of those
8   27 to 28 times that you've testified, that it was
9   in reference to an automobile accident?
10   A. I don't know a specific number but I would
11   think that it's about half.
12   Q. Of the three or four for Maryland, do you
13   remember offhand what the nature of that testimony
14   was?
15   A. One case involved a cigarette race boat on
16   the Chesapeake Bay that struck a jet ski, that was
17   a criminal case. I did a civil case involving a
18   bicycle, a single vehicle bicycle collision, I
19   think that was in Montgomery County.
20   The third case was a premises trip and
21   fall case. And then it's the fourth one that I
22   don't know exists; I can't think of what it is but
23   I've got a -- I'm not sure if there was a fourth
24   one but for some reason I think there was and I
25   just can't remember what it was about.

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1   Dr. Vigilante - Direct
2   Q. Understood.
3   A. Yeah. No. I was thinking of another one
4   but that was actually in D.C. If I recall, I'll
5   let you know.
6   Q. Understood. And in the cases where you are
7   retained as a human factors expert, do you
8   generally produce a written report?
9   A. Sometimes I do.
10   Q. And the reason why you wouldn't is because
11   it wasn't requested?
12   A. Or required.
13   Q. Do you keep copies of your trial testimony
14   or your reports that you prepare in litigation
15   matters?
16   A. Generally I don't keep copies of testimony,
17   whether it's deposition or trial. Reports,
18   typically I do.
19   Q. Do you know if you have the reports for the
20   cases that you testified for in Maryland?
21   A. I do not. And I don't know if there were
22   reports done for those cases.
23   Q. Gotcha. Understood.
24   A. Typically Maryland doesn't require a report
25   in state court.

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1   Dr. Vigilante - Direct
2   Q. Correct. Okay.
3   A. Those three were state court cases.
4   Q. Understood. And I didn't ask you about
5   publications but I know from your C.V. that you've
6   written a number of, we'll say, academic articles;
7   would that be fair to say we'll call them?
8   A. Scientific research articles.
9   Q. Sure. Do you keep copies of those?
10   A. I have some, I don't have all of them.
11   Q. And I know you've done several
12   presentations as well. Do you keep copies of
13   those presentations?
14   A. Some, but not all.
15   Q. I want to go back to sort of the field of
16   human factors and ergonomics and ask you to narrow
17   it down and explain what human factors are
18   involved with driving generally.
19   A. Okay. Typically topics that are of
20   interest in the driving environment are things
21   such as visual perception. Ninety percent of the
22   driving task is visual. So therefore it's a
23   significant focus of human factors and ergonomics
24   research in the driving environment.
25   Other areas that are of interest are

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1   Dr. Vigilante - Direct
2   expectancies and how they affect the driving task.
3   Decision-making. Human information processing.
4   Decision-making which gets into be or which is
5   related to expectancies.
6   We're interested in perception-
7   reaction time. That's another area that's
8   received a lot of interest in the field of human
9   factors and ergonomics.
10   We look at in conjunction with
11   expectancies and decision-making and information
12   processing, what we term, "guidance." This is the
13   information from the roadway, both formal guidance
14   that's built into the roadway, and informal
15   guidance, that's the cues that are available in
16   the environment and how they affect both -- how
17   they affect driver performance; specifically with
18   respect to visual perception, perceptual-reaction
19   time and decision-making.
20   Q. And as we discuss some of these terms and
21   topics, I might ask you again to explain a little
22   further but thank you for that.
23   (Documents marked for identification
24   as V-1 and V-2.)
25   BY MR. AKPAN:

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1   Dr. Vigilante - Direct
2   Q. Dr. Vigilante, I'm showing you what I have
3   marked as your deposition Exhibits Nos. 1 and 2.
4   For Mark on the phone, they are -- we'll do away
5   with some of the formalities. They are Dr.
6   Vigilante's C.V. from Robson Forensic and then two
7   is his C.V., I believe, from Vigilante
8   Consulting/Forensic. Okay.
9   BY MR. AKPAN:
10 Q. Doctor, I want you to take a look at those
11 V-1 and V-2 and tell me if you recognize it for
12 the record.
13 A. Yes. I do recognize them.
14 Q. Can you tell us what they are?
15 A. V-1 appears to be my C.V. from January,
16 2014 when I was employed by Robson Forensic; it's
17 on the Robson Forensic letterhead.
18   And V-2 is an outdated version of my
19 current C.V. and it's on the Vigilante Forensic
20 letterhead.
21 Q. And you said V-2 is outdated. How do you
22 know it's outdated?
23 A. The date on the bottom left corner of the
24 first page is 11/1/2015.
25 Q. And do you have a more recent C.V. for us?

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1   Dr. Vigilante - Direct
2   A. Yes. The date on my current C.V. is
3   September 29, 2016.
4   Q. Can I take a look at it?
5   A. Sure. Absolutely.
6   Q. Do you have an extra copy of this?
7   A. I don't, but you're welcome to --
8   Q. I can mark it and keep it with us?
9   A. Sure.
10   MR. AKPAN: Can you mark that as
11 three.
12   (Document marked for identification as
13 V-3.)
14   BY MR. AKPAN:
15 Q. Doctor, you can choose to use whichever
16 C.V. you like. I was going to the next set of
17 questions we're going to go to what is on V-2 --
18 A. Okay.
19 Q. -- I believe. But I know it's probably the
20 information is the same on V-3. We know you
21 started Vigilante Forensics October 1, 2015
22 officially. Was there a particular reason why you
23 left Robson Forensic?
24 A. Personal and professional growth.
25 Q. For your work on this case, it started

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1   Dr. Vigilante - Direct
2   while you were at Robson Forensic and it now
3   continues while you're at Vigilante
4   Consulting/Forensic. Do you possess the entire
5   file under Vigilante Consulting?
6   A. Yes and no.
7   Q. Explain.
8   A. It depends on your definition of, "entire
9   file." So I have my file that I consider my
10 expert file if you will.
11 Q. Okay.
12 A. I don't have access to the invoices that
13 were sent by Robson Forensic or the statements
14 that were sent by Robson Forensic while I was
15 employed by them. So if that's considered part of
16 the overall file, I don't have that.
17   So there are some administrative
18 things I don't have.
19 Q. Gotcha. Saying invoices are sort of the
20 administrative stuff. In terms of the documents
21 that would formulate your opinions in this case,
22 you contain or have or possess that file under
23 Vigilante Forensics?
24 A. I do have it.
25 Q. I wanted you to take a look at, so I think

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1   Dr. Vigilante - Direct
2   it's the first page of either the Vigilante
3   Forensic C.V.'s and I wanted to ask you about a
4   few of these topic areas. Vision and driving, I
5   think we've talked about, but is there anything
6   involved in that topic area that you haven't
7   discussed already?
8   A. That's a loaded question.
9   Q. Generally. Sorry. Generally. Generally.
10 I understand. I just want to get an understanding
11 of what you mean in terms of your expertise with
12 vision and driving.
13 A. Well, my expertise is in human vision: How
14 people collect information through the visual
15 sense, the eyes. How that information is
16 processed, sent to the brain, and how it's further
17 processed, and how its translation to perception,
18 perception translates into decision-making with
19 the intermix of information-processing,
20 expectancies, memory and so forth. I apply that
21 to the driving environment.
22   And as I mentioned earlier, driving is
23 90 percent visual as far as collecting information
24 from the environment.
25 Q. In that field of study, do you deal with or

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1   Dr. Vigilante - Direct
2   do any research on how diseases of the eyes would
3   affect perception, vision and/or driving?
4   A.   I am familiar with some of that, yes.
5   Q.   What are you familiar with in terms of
6   diseases of the eyes and how it affects perception
7   and driving?
8   A.   Again it's a loaded question. I know that
9   different diseases, different conditions,
10   generally as we age, it can affect visual
11   performance. Typically it's related to the
12   ability of the eye to capture information from the
13   environment.
14   Also the translation of that visual
15   information into responses is affected by aging in
16   different types of illnesses or diseases or
17   degenerative issues.
18   Q.   Have you done any research or applied
19   science that has accounted for the differences or
20   the effect in perception or vision with someone
21   that has a disease of the eye such as glaucoma or
22   cataracts or macular degeneration or anything of
23   the sort?
24   A.   Yeah. I'm familiar with all of them and
25   generally how they affect the ability to capture

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1   Dr. Vigilante - Direct
2   information from the eyes.
3   Q.   Have you done -- my question is a little
4   bit more specific -- have you done any specific
5   work such as research or technical reports,
6   anything outside of just being aware and familiar
7   with it? Do you understand what I mean?
8   A.   I have not personally performed any studies
9   in the driving environment where those issues were
10   controlled for and looked at but I'm familiar with
11   research related to those topics on the driving
12   environment.
13   So those three things are, you know,
14   recognizes potential items that are deferments to
15   driving performance; particularly, for elderly
16   drivers.
17   Q.   Somewhere down, let's see here. Somewhere
18   in the middle of the page, there's a reference to
19   aging?
20   A.   Yes.
21   Q.   What is that area of study or that sort of
22   focus of study?
23   A.   Well, whether they be older drivers, older
24   consumers, older users, they bring a set of
25   characteristics that generally don't exist in a

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1   Dr. Vigilante - Direct
2   younger group of users. So from a human factors
3   standpoint when you're designing products, trying
4   to understand human performance and systems, you
5   have to account for those factors.
6   So part of my study, formal study as
7   an undergraduate and graduate and some of my
8   research focused on factors that are known to be
9   at issue as we get older. So performance
10   differences in seniors and older adults and how
11   that affects performance on a given task.
12   Q.   For let's focus on the driving task. Are
13   there any set of, and you're going to kill me for
14   the phrasing I use, sort of general understandings
15   in your field about the difference between an
16   aging driver or an older driver as opposed to a
17   younger driver?
18   A.   Sure.
19   Q.   Tell me about them.
20   A.   Well, for some examples, we know based upon
21   research, that older drivers tend to be slower in
22   their perception reaction times than younger
23   adults, compared to younger adults. So there's
24   typically attributed to delays in information-
25   processing and reaction, not necessarily in

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1   Dr. Vigilante - Direct
2   perception. We know that as we age, the changes
3   to the lens of the eye, whether it be the
4   hardening or the yellowing associated with
5   cataract, it affects our ability to collect
6   information at night.
7   So typically older adults have more
8   issues with collecting information through the
9   visual senses at night compared to younger
10   drivers, so their contrast sensitivity is higher.
11   Of course, visual acuity tends to drop off as we
12   get older.
13   Most people, you know, if they didn't
14   need correction, corrective lenses younger,
15   they're more likely to need them as they get
16   older. We know that older adults tend to, again
17   due to changes in the anatomy of the eye, have
18   more problems with glare at night.
19   So these types of things can affect
20   their ability to detect an object. So where a
21   younger driver may be able to detect an object at
22   night at let's say 200 feet, the older driver may
23   be limited to about 100 foot of detection ability.
24   We know that older driver lose some
25   ability in their neck and their upper body. And

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1   Dr. Vigilante - Direct
2 one of the direct results of that is older drivers
3 have a hard time looking behind them.
4 (Indicating.) And I'm turning my head to the left
5 and to the right. So as we age, we typically lose
6 the ability or the range of motion in our neck, so
7 it hinders an older driver's ability to see behind
8 them.
9   Let's see what else do we know about
10 older drivers? There's a lot more research on it
11 but those are kind of some of the examples that
12 are popping into mind quickly as we sit here.
13 Q. I appreciate that. The next thing I want
14 you to take a look at is your list of publications
15 and presentations. So --
16 A. Okay.
17 Q.   -- let's use your most recent C.V. Do you
18 know how many presentations you've given on vision
19 and driving? And I don't necessarily particularly
20 care about the count but if you could identify
21 them on your C.V., that would be even great.
22 Would even be better.
23   And while you're looking, that
24 question should be vision and driving and aging
25 presentations.

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1   Dr. Vigilante - Direct
2 A. I have not done any presentations or
3 publications related to aging and driving. I've
4 done research on the effects of aging with the
5 ability to read and acquire knowledge and
6 information from product labels --
7 Q. Gotcha. Okay.
8 A.   -- but not driving environment.
9 Q. Okay. And what you told me there was
10 strictly for presentations or did that also
11 encompass publications?
12 A. I think there's only -- to be fair.
13 There's only one item in that list that was not an
14 actual publication, it was only a presentation.
15 So yes. To answer your question, it did include
16 both publications and presentations.
17 Q. Understood. And just to make sure that you
18 answered my original question. Can you point to
19 me on that C.V. any publications in the area of
20 vision and driving?
21 A. I have not done any publications -- I've
22 not written any publications with regard to vision
23 and roadway operation. The only vision and
24 vehicle operation I've done is the one listed on
25 page five which is the, "Eckhardt, Vigilante and

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1   Dr. Vigilante - Direct
2 Coste visibility factors in small boat
3 collisions."
4 Q. Gotcha. Gotcha. Do you know if you have a
5 copy of that publication?
6 A. I do not know if I have a copy of that
7 publication. I will say that everything under
8 publications and presentations are publicly
9 available.
10 Q. Gotcha. Okay.
11 A. The items under the technical reports are
12 not generally publicly available, they're IBM
13 confidential documents.
14 Q. Gotcha. And that was going to be my next
15 sort of topic was what are the technical reports?
16 And you said they are about IBM computers
17 essentially?
18 A. All the technical reports are from my
19 career at IBM. They were all user-based studies
20 or other studies related to consumer and
21 commercial computer-related products.
22 Q. Gotcha. And is it fair, I see that you
23 have a handful of or maybe more than a handful of
24 published patents. Were they related to your work
25 at IBM?

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1   Dr. Vigilante - Direct
2 A. Yes.
3 Q. And how long were you at IBM?
4 A. About five years.
5 Q. And when did you work at IBM? Sorry.
6 A. I believe I started at IBM, it's in my
7 C.V., so I'll take a look so I don't give the
8 incorrect information. I started in 1998 at IBM
9 and left in July of 2003.
10 Q. I'm going to ask you, I want to go through
11 a little bit of the research experience and the
12 work experience. And let's start at the
13 University of Scranton, Department of
14 Psychology --
15 A. Okay.
16 Q.   -- from '92 to 1993. What was the field of
17 study or focus of that research experience that
18 you have there?
19 A. From '92 to '93, there were two different
20 studies, general areas of study that I was working
21 on. One of them had to do with predicting relapse
22 rates of dually-diagnosed psychiatric inpatients
23 that generally have nothing to do with the work I
24 do now; it's more of a clinical consulting
25 practice.

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1   Dr. Vigilante - Direct
2   The other area of study was designing
3   a perception-reaction time experiment. So that
4   would be more related to human factors and
5   ergonomics where we're looking at and studying
6   perception-reaction time and how it's influenced
7   by different factors.
8 Q. Gotcha. And that perception and reaction
9   time research at the University of Scranton was in
10   driving, was it in some other sort of system?
11 A. It was more general. It wasn't specific to
12   the driving environment, it was more general
13   performance.
14 Q. Gotcha.
15 A. The other thing I did at the University of
16   Scranton was, it was part of my T.A. where I
17   worked with students in statistics and research
18   methods. So that's all covered under that time
19   period.
20 Q. The next under research experience was 1994
21   to 2001 at North Carolina State University. Can
22   you tell me briefly what research you were doing
23   there?
24 A. Mostly all of the work I did from '94 to
25   2001 as a research assistant dealt with the topics

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1   Dr. Vigilante - Direct
2   of warnings: How people perceive and respond to
3   warnings, whether they be warning labels or
4   warning signs, and how people perceive risks and
5   the factors that affect those perceptions of risk.
6   So that was both my own published
7   research and the research I was helping other lab
8   members conduct.
9 Q. Then I think we're in the heading of
10   professional experience and we go back to 1995 at,
11   looks like at Penn State?
12 A. Okay.
13 Q. And what work were you doing there in 1995?
14 A. At Penn State University, I worked for the
15   Center for Cumulative Trauma Disorders. They were
16   basically a university, state-sponsored outreach
17   program to industries in Pennsylvania.
18   Essentially I went out to different
19   commercial and industrial facilities to identify
20   risk factors that were associated with high
21   incident rates of worker injury. Collected data
22   on the tasks that were being performed and
23   identified what those risk factors were and then
24   work with part of the engineering team to provide
25   mitigation strategies, whether they're redesigning

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1   Dr. Vigilante - Direct
2   the job, redesigning the task, providing aids, et
3   cetera.
4 Q. The next listing there is '94 to '97 at
5   North Carolina State University as an academic
6   advisor. I think maybe it melds into some of the
7   stuff you talked to me about before with the
8   research experience?
9 A. No. This was a separate position I had at
10   North Carolina State University for my first three
11   years. It was a way to -- it was kind of like a
12   work study program and essentially it was just
13   advising undergraduate students the requirements
14   they needed to matriculate and graduate.
15 Q. And then are those --
16 A. Are they the same thing: Matriculate? I'm
17   sorry.
18   MR. ZUBER: What was the questions?
19   THE WITNESS: I'll ask you later when
20   we're off the record.
21   BY MR. AKPAN:
22 Q. And then '97 to 2003, we have the
23   International Business Machine or IBM Corporation.
24   Tell me sort of generally the work that you were
25   doing at IBM.

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1   Dr. Vigilante - Direct
2 A. Thank you. So I made a mistake a little
3   bit earlier when I said I worked for IBM from 1998
4   to 2003. I actually started with IBM in 1997 and
5   left in July of 2003.
6   So from basically, I think, the summer
7   of '97 to December 31st of 1997, I was a co-op
8   intern at IBM and I was working in a Web design
9   and development studio designing and developing
10   Web sites. In 1998, I moved over to the
11   networking hardware division at IBM as a human
12   factors engineer consultant. And there, they -- I
13   was assigned to the personal systems group at IBM
14   where I worked on the design and development of
15   P.C.-related products: So desktops, laptops and
16   P.C.-based servers, and then the peripherals that
17   attach to them.
18   And later on, I think in 2002, I was
19   assigned between the software group doing software
20   usability for internal IBM applications. And then
21   I was working with the storage systems group
22   designing and developing commercial-based storage
23   systems.
24   So these are the large refrigerator-
25   sized units that are in like, maybe used by Google

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1   Dr. Vigilante - Direct
2   to store all their data, where they have huge
3   server farms and data storage farms. So that's
4   kind of a progression of work through IBM.
5   Q.   And then from 2001 to 2003, A-R-C-C-A,
6   Inc., what work were you doing there?
7   A.   So ARCCA is a forensic engineering firm
8   based out of Bucks County, Pennsylvania, and I was
9   essentially moonlighting with ARCCA doing human
10   factors forensic investigations while I was
11   working with IBM.
12   Apparently when I finished my Ph.D., I
13   didn't know what to do with all the time I had, so
14   I decided to get a part-time job to occupy myself.
15   Q.   Understood. And what area of work or
16   forensic science work were you doing at ARCCA?
17   A.   Similar to what I've done for Robson
18   Forensic and Vigilante Forensic, I investigated
19   car collisions, people being injured with consumer
20   products, and environmental. I think I did a case
21   where a boy climbed a high voltage tower and was
22   electrocuted.
23   It's the general types of work I do
24   now.
25   Q.   Gotcha.

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1   Dr. Vigilante - Direct
2   (Document marked for identification as
3   V-4.)
4   MR. AKPAN: And Mark, for you, we are
5   looking at V-4. I'm showing Dr. Vigilante what
6   is the trial testimony history that was part of
7   the Rule 26(a)(2) disclosure. So this might be
8   more up-to-date now but this came -- this
9   relates to V-2. That's what came with --
10   MR. KOZLOWSKI: I'm with you.
11   MR. AKPAN: Gotcha.
12   BY MR. AKPAN:
13   Q.   Doctor, I'm showing you what I've marked as
14   your deposition Exhibit V-4. Can you take a look
15   at it and tell me if you recognize what it is?
16   A.   This looks like a history of trials that
17   I've testified in. And I don't remember putting
18   together this document.
19   Q.   You think someone at Robson put that
20   together?
21   A.   I don't want to hazard a guess.
22   Q.   Gotcha.
23   A.   I mean I potentially could have done it
24   myself but I just don't recall doing it. And it's
25   not a document that I typically keep.

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1   Dr. Vigilante - Direct
2   Q.   On the casework that's listed there, that
3   was all done while you were at Robson Forensic?
4   A.   Yes. 2004 to 2014. So this would have all
5   been during my employment with Robson Forensic.
6   Q.   I wanted to ask you about, particularly
7   about a couple of those cases. See what you
8   remember about -- you got it?
9   MR. ZUBER: Yeah. I got a copy.
10   BY MR. AKPAN:
11   Q.   The first one is on the first page, trial
12   list one, the Neida Robau case. It looks like
13   that was in Miami Dade County, Florida. Did you
14   testify in that trial?
15   A.   Yeah. These are all cases I testified in.
16   Up until, I don't know if it's complete, but it
17   looks like up until 2014.
18   Q.   Do you remember which party retained you in
19   that case?
20   A.   I think it was the defense.
21   Q.   And do you remember what the scope of your
22   work in that case was for?
23   A.   I think what's written here is kind of the
24   scope. Topics addressed: Expectancy violation.
25   Perception-reaction time. Driver distraction.

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1   Dr. Vigilante - Direct
2   Visibility distance to tractor trailer. Ability
3   of Plaintiff to avoid collision.
4   Q.   Do you remember what the outcome of that
5   case was?
6   A.   It went to the jury.
7   Q.   They didn't tell you what happened?
8   A.   I don't -- I mean I probably knew at the
9   time but I don't recall now.
10   Q.   Gotcha.
11   A.   And I may be wrong. I may have -- I can't
12   say whether I testified on behalf of the plaintiff
13   or defendant in this case; I don't recall.
14   Q.   In the methodology, that last paragraph,
15   there's a reference to inattention, distraction
16   and/or fatigue and drowsiness. Do you remember,
17   was there a theory or a thought that one of the
18   drivers had fallen asleep in that case?
19   A.   I don't recall that being -- I mean this is
20   a very old case, but I don't recall that as being
21   an issue. It looks like, the way it's written,
22   that the issue would have been more with regard to
23   fatigue and drowsiness as opposed to falling
24   asleep. They're related but they're two different
25   topics.

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1   Dr. Vigilante - Direct
2 Q. Tell me the difference.
3 A. Well, fatigue/drowsiness oftentimes results
4   in the driver falling asleep, so that's why
5   they're related; it's kind of a precursor. But
6   fatigue/drowsiness on its own is a different area
7   of -- a specific area of focus. So that's why I
8   kind of differentiate them.
9 Q. And again I know it's a long time ago, but
10   you know, tell me what your memory recall or say
11   that you don't remember it. Do you know if your
12   research in that case involved reviewing any
13   medical records?
14 A. I don't recall.
15 Q. The next case I want you to look at is the
16   Terence and Patricia Smith case from, it looks
17   like August, 2007.
18 A. (Witness complies.) Okay.
19 Q. That's in, looks like it's here in
20   Pennsylvania. Again the methodology references
21   inattention, distraction and/or fatigue and
22   drowsiness.
23   Do you remember what the issues of
24   fatigue, inattention, distraction or drowsiness
25   were involved in that case?

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1   Dr. Vigilante - Direct
2 A. That may have been this is -- I do recall
3   this case as working on behalf of the plaintiff.
4   This case happened at sunrise. So I don't
5   remember the time of year. If it was, you know,
6   mid-summer, sunrise could have been fairly early.
7   So there may have been some contention
8   of fatigue/drowsiness. And I don't remember if
9   the plaintiff driver was on his way to work, maybe
10   he's on his way home from work, I just don't
11   recall.
12 Q. Gotcha. In the cases that you testify at a
13   trial, do you think it's more likely than not that
14   you probably produced a report in that case?
15 A. In that case?
16 Q. Or not in this particular case but in the
17   cases where it went to trial, do you think it's
18   more likely than not that you produced a written
19   report?
20 A. I can't say. I do know that, for example,
21   Florida is much like Maryland, they don't require
22   a report, so I don't know.
23 Q. Gotcha. And do you, for the Smith case in
24   August, 2007, do you remember what the outcome of
25   that case was?

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1   Dr. Vigilante - Direct
2 A. That was a jury verdict for the plaintiff.
3 Q. The next case I want you to take a look at
4   is the David Shore case from January, 2008.
5 A. (Witness complies.) Okay.
6 Q. Again this, in the methodology it
7   references terms, "inattention, distraction,
8   fatigue and drowsiness." Do you remember what
9   issues of fatigue, inattention, distraction and/or
10   drowsiness were involved in that case?
11 A. Generally --
12   (Interruption for secretary.)
13   THE WITNESS: That was a collision
14   that happened before sunrise, so in the early
15   morning. It was wintertime, so I don't know how
16   early. Sun rises generally a little bit later
17   in the morning in summertime.
18   So I was working on behalf of the
19   defendant driver who struck a pedestrian, and
20   I'm assuming that the plaintiff alleged that the
21   cause of the collision was related to
22   inattention, distraction and/or
23   fatigue/drowsiness.
24   BY MR. AKPAN:
25 Q. Gotcha. Want to take a break?

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1   Dr. Vigilante - Direct
2 A. Yeah.
3   (Brief recess.)
4   MR. AKPAN: Ready to go?
5   (No response.)
6   BY MR. AKPAN:
7 Q. Doctor, when we left off, we were talking
8   about the David Shore case from January, 2008, and
9   I think you had answered my question about what
10   the issue around inattention, distraction and/or
11   fatigue was. Do you remember what the outcome of
12   that case was?
13 A. I'm fairly certain it went to the jury and
14   was a defense verdict.
15 Q. And in that case you worked for, you were
16   retained by the defense or --
17 A. Yes.
18 Q. -- plaintiff?
19 A. Defense.
20 Q. The next case I want you to take a look at
21   is the Commonwealth of Pennsylvania, June, 2012.
22 A. (Witness complies.) Yep.
23 Q. And again I focus on that because the
24   methodology included inattention, distraction
25   and/or fatigue/drowsiness. Do you remember what

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1   Dr. Vigilante - Direct
2   the facts of that case were related to those
3   issues?
4 A.   Yeah. That was a single-vehicle collision
5   at night or early morning hours; I don't remember
6   if it was like 3:00 in the morning, 4:00 in the
7   morning, whatever, and there was a contention that
8   the collision was caused by alcohol and/or
9   fatigue/drowsiness.
10   So I looked at the factors associated
11   with those issues. Looked at the fact pattern of
12   the crash and came to opinions.
13 Q.   And I'm assuming that you were retained by
14   the defendant?
15 A.   Yes.
16 Q.   Gotcha. Do you remember the outcome of
17   that case?
18 A.   I'm pretty sure that was, I don't remember
19   if that was a jury trial or a bench trial, but the
20   charges associated with the DUI and/or fatigue/
21   drowsiness were dismissed.
22 Q.   And then the last one particular case I
23   want to ask you about is the one from August of
24   2014, Eric Carter case. And again I focus on that
25   because it included in the methodology the terms,

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1   Dr. Vigilante - Direct
2   "inattention, distraction and/or
3   fatigue/drowsiness." Do you remember what the
4   facts of that case were related to those issues?
5 A.   Yeah. This was a single-vehicle -- no, no,
6   no, no, no. I'm sorry. It was a two-vehicle
7   collision. It happened in the early morning
8   hours, I think like 5 o'clock, 5:00 a.m. So it
9   was dark.
10   It was on a high-speed highway,
11   multiple-lane highway. It happened at an
12   interchange where the State had the off-ramp
13   closed. They closed it with traffic cones.
14   The defendant in that case was a
15   United States military member, that's why it was
16   against the U.S. America. So he had intended to
17   get off on that exit and was going to the airport
18   and didn't know how to get to the airport
19   otherwise.
20   So there was a work vehicle stopped on
21   the off-ramp side on the off-ramp to the right of
22   the traffic cones near the end of the -- where the
23   off-ramp started to diverge significantly from the
24   heading of the roadway which was straight.
25   The defendant pulled up next to the

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1   Dr. Vigilante - Direct
2   truck in the far right lane. I think it was at
3   least three, maybe four lanes, thru lanes, with
4   his lights on. The work truck had its lights on.
5   Overhead light on. Revolving yellow light on.
6   Taillights on, et cetera.
7   They asked him how, I think he asked
8   him how to, you know, to get to the airport with
9   the exit closed. While he was stopped there, the
10   plaintiff, Eric Carter, I think he's deceased; he
11   died in the collision. He ran square into the
12   back of him with no apparent response, reaction
13   prior to the crash.
14 Q.   Understood. Understood. Do you remember
15   who you were retained by in that case?
16 A.   The defendant.
17 Q.   And do you remember what your conclusion
18   was about the gentleman who ran into the back of
19   that truck?
20 A.   Generally that there was enough visual cues
21   for a reasonably attentive driver to detect,
22   identify and avoid the stopped vehicle in the
23   right travel lane.
24 Q.   Did you produce a report in this case?
25 A.   Most likely --

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1   Dr. Vigilante - Direct
2 Q.   Or prepare a report?
3 A.   Most likely because it's a federal court
4   case.
5 Q.   Do you know if Robson Forensic still has a
6   copy of that report?
7 A.   You know what, I have no idea.
8 Q.   Doctor, do you keep records which show how
9   many times you've been retained on behalf of a
10   plaintiff versus a defendant?
11 A.   Since 2016, I do.
12 Q.   Before 2016, did you?
13 A.   I did not keep a formal record. I don't
14   know if Robson kept a formal record. Generally on
15   case intake, we would designate
16   plaintiff/defendant.
17   To shortcut your questions. Overall,
18   my plaintiff/defendant work is about 60, 65
19   plaintiff and it kind of varies over time. For
20   the roadway work, driving and driving environment,
21   it's closer to 50/50.
22   For product warnings work, it's
23   heavily skewed to the plaintiff.
24 Q.   Doctor, do you know offhand how many times
25   have you been retained in a case by Paul

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1   Dr. Vigilante - Direct
2   Blumenthal?
3 A. I personally, I believe this is the only
4   case. I can't speak for Robson Forensic.
5 Q. Do you know how many times you have been
6   retained by Laura Zois or Miller & Zois, that law
7   firm?
8 A. I was retained and worked for Ms. Zois on
9   one other case and I believe that we've discussed
10   a second case but I don't know that I was ever
11   officially retained on it or did any work on it.
12 Q. Gotcha. Doctor, do you know how many times
13   you were retained by a party in a case but your
14   conclusions and/or opinions were adverse to their
15   theory or position in the case?
16 A. It happens. I don't keep track of that.
17   The last one I recall was, and I recall because I
18   had a hard time collecting the bill, it was on
19   behalf of a defendant for SEPTA which is the
20   Philadelphia Southeast or the Pennsylvania
21   Southeast -- Southeast Pennsylvania Transit
22   Authority here in Philadelphia.
23   The bus, a city bus hit a pedestrian
24   and there was a question as to whether or not the
25   pedestrian was attentive or not, not paying

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1   Dr. Vigilante - Direct
2   attention. And when I did my analysis and
3   investigation, it showed that the, unfortunately,
4   the pedestrian was more attentive than she should
5   have been and she was actually -- she walked in
6   front of the bus because the bus driver had a
7   trainer/supervisor standing in the front well that
8   waved her over.
9   It was a tragic accident. The
10   plaintiff was killed in the collision.
11 Q. Understood. Understood. So other than
12   that case that sticks out in your mind, can you
13   remember any other times when your ultimate
14   conclusions were adverse to the theory of the case
15   for the person that retained you?
16 A. You know, it happens a couple times a year.
17   I mean the other one I remember is a collision
18   involving two motorcycles and an older gentleman,
19   an older woman pulled out from an intersection and
20   the motorcyclist had not been correct in their
21   speed estimation at their depositions. And you
22   know, we found out that they were traveling at
23   like two, three times the rate that they alleged
24   they were traveling or stated they were traveling.
25   So once that information was factored

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1   Dr. Vigilante - Direct
2   in my analysis, I couldn't support an opinion on
3   behalf of defense in that case. Or I'm sorry.
4   The plaintiff in that case.
5 Q. Let's start talking about this case.
6   Doctor, do you know when you were first contacted
7   by an attorney for Robert Glad in this case?
8 A. I do.
9 Q. And when was that?
10 A. (Looks at computer.) April 1st, 2014 it
11   appears.
12 Q. And was that Attorney Paul Blumenthal?
13 A. Yes.
14 Q. And did Mr. Blumenthal tell you what he
15   wanted you to do?
16 A. I don't know that he told me what he wanted
17   me to do. He gave me kind of a thumbnail sketch
18   of what the collision involved, what the facts
19   were, because he knew them at the time or at least
20   as he expressed them to me at the time.
21 Q. And you are looking at a computer. Did he
22   send you an email or something like that?
23 A. No. I have a copy of a case in Courier
24   form. So when Mr. Blumenthal called, I don't know
25   if he got me directly or he was transferred over

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1   Dr. Vigilante - Direct
2   to me. But typically I fill out an inquiry, and
3   you know, the attorney contact information,
4   party's names. Whether it was plaintiff or
5   defendant. Where it was located. Date of the
6   incident and kind of a brief description of what
7   happened.
8 Q. And what was your brief description of what
9   happened in this case?
10 A. I can read it to you.
11 Q. That would be great.
12 A. And I'm pretty sure it was sent over with
13   that subpoena request, so you should have a copy
14   of it.
15 Q. Okay.
16 A. If you don't, I'm happy to, you know,
17   provide it. About a paragraph long so --
18 Q. That's fine.
19 A. -- bear with me. Eighty-plus years old.
20   Drives back and forth from New York to Florida.
21   And there's some abbreviations in here that I'm
22   just going to state out.
23   Day of incident, driving back with a
24   friend. Plaintiff and friend are switching, it
25   says of driving but it should be off driving.

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1   Dr. Vigilante - Direct
2   Route 301, four lanes: Two north, two south.
3   Just south of Delaware line on Route 301. 1:17
4   p.m.
5   Rural road. Dump truck going south
6   made a J-turn to swing around north to make a
7   right up the road. Plaintiff hits dump trailer
8   with left front of his car into right rear of the
9   dump truck.
10   Defense: Contributory negligence.
11   Police report said Plaintiff stated that he must
12   have fallen asleep. Passenger stated they were
13   talking and the plaintiff was not asleep.
14   EMTs said he was unconscious at scene
15   upon arrival. Plaintiff driving in right lane,
16   had cruise control on. Sixty-three miles per hour
17   at impact. Did not apply brake before impact.
18   Plaintiff does not know how collision
19   occurred or excuse me. Happened. Did not see
20   tractor trailer before impact. S-E-A. Defense
21   expert said Plaintiff had 12 seconds to see
22   tractor trailer before or dump truck before
23   impact.
24   U.S. 301 just south of Massey-Galena
25   Road, Kent County.

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1   Dr. Vigilante - Direct
2   Q.   And after Mr. Blumenthal contacted you,
3   what was your understanding of what he wanted you
4   to do in this case?
5   A.   At that point, I don't recall, but
6   eventually he asked me to determine if Mr. Demby's
7   lane change was improper and violated Mr. Glad's
8   reasonable expectancy in a manner which caused the
9   collision. To determine if Mr. Glad had
10   sufficient time and distance to avoid the
11   collision once Mr. Demby began changing lanes.
12   And if the collision was consistent
13   with Mr. Glad falling asleep at the wheel.
14   Q.   And I'm going to get to, we'll get to your
15   report, but I will get to those particular three
16   topics.
17   (Document marked for identification as
18   V-5.)
19   MR. AKPAN: Mark, I'm showing the Rule
20   26(a)(2) disclosure for the plaintiff.
21   BY MR. AKPAN
22   Q.   Dr. Vigilante, I'm showing you --
23   MR. KOZLOWSKI: Got it.
24   BY MR. AKPAN:
25   Q.   -- what I marked as your deposition Exhibit

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1   Dr. Vigilante - Direct
2   V-5. Have you seen that document before today?
3   A.   I don't recall seeing this document and I
4   don't have it in my file.
5   Q.   Did you participate in drafting it, in
6   drafting any part of that document?
7   A.   I don't have any recollection of helping
8   the creation of the document.
9   Q.   Let's talk about who you've spoken to about
10   this case. Okay?
11   A.   Okay.
12   Q.   Did you speak with Robert Glad at any point
13   in time about this case?
14   A.   I don't believe so.
15   Q.   Did you talk to Mr. Glad's passenger at any
16   time about this case?
17   A.   Not that I'm aware of.
18   Q.   Did you speak to Markeith Demby, the dump
19   truck driver, about this case at any time?
20   A.   No.
21   Q.   Do you know who Glen Reuschling is?
22   A.   Yes.
23   Q.   Have you ever worked with him before this
24   case?
25   A.   I don't know.

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1   Dr. Vigilante - Direct
2   Q.   Did you know him before this case?
3   A.   I don't recall.
4   Q.   Did you speak to Glen Reuschling about this
5   case?
6   A.   Multiple times.
7   Q.   Can you tell me about how many times?
8   A.   I'd have to hazard a guess.
9   Q.   Sure.
10   A.   Maybe three times.
11   Q.   Do you remember the last time you spoke to
12   him about this case?
13   A.   I do not.
14   Q.   Would it have been in 2016?
15   A.   I don't recall doing any work on this case
16   in 2016, so probably not.
17   Q.   And do you have any independent
18   recollection about what you talked about when you
19   spoke to Mr. Reuschling those three times?
20   A.   Independent, no.
21   Q.   You can venture a guess though?
22   A.   Well, I know what we talked about on a
23   couple, on at least a couple of occasions.
24   Q.   Did you ever meet Glen Reuschling with
25   respect to this case?

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1   Dr. Vigilante - Direct
2 A. Yes.
3 Q. When?
4 A. May 14th, 2014.
5 Q. And was that at the scene?
6 A. It was at the site.
7 Q. At the site, okay. And how long were you
8   at the site on May --
9 A. 14.
10 Q. -- 14th, 2014?
11 A. I don't recall. If you've got the invoices
12 there, I might notice in the invoices. I mean I
13 can...
14 Q. Was that the only time that you had been to
15 the scene of the accident?
16 A. Well, I was never at the scene but I've
17 been at the site twice.
18 Q. I'm sorry. The site. But you said you've
19 been to the site twice?
20 A. Yes.
21 Q. Did you take any measurements when you went
22 to the site?
23 A. I don't believe I took any physical
24 measurements.
25 Q. Did you take any photographs at the site?

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1   Dr. Vigilante - Direct
2 A. Yes.
3 Q. Why did you go to the scene on May 14th,
4   2014?
5 A. I went to the site as part of my
6   investigation. I'm sorry. Did you say the 14th?
7 Q. Yeah. May 14th, 2014.
8 A. Okay. Yeah. So on the 14th, specifically
9   I was meeting Glen Reuschling and some of his
10 colleagues, I believe, and Mr. Reuschling arranged
11 to have a dump truck come down to the site and
12 perform some maneuvers through the J-turn, so I
13 came down for that event.
14 Q. And then you told me that you had been to
15 the site a second time, correct?
16 A. Prior to that, I had.
17 Q. When was that time?
18 A. The day before.
19 Q. Gotcha. And what did you do the day before
20 at the site?
21 A. Give me one second. (Looks at computer.)
22 I took some photographs and some videos and then
23 took some notes.
24 Q. And you still have those photographs,
25 videos?

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1   Dr. Vigilante - Direct
2 A. Yes.
3 Q. Do you remember what the photographs and
4   videos were of that you took?
5 A. They were of the intersection and then
6   traveling north and south on 301 near the
7   intersection -- near the point of impact, and I
8   should say the J-turn.
9 Q. So traveling north and south and
10 maneuvering that J-turn?
11 A. Yes.
12 Q. Do you know who Paul Kelly is?
13 A. Not offhand.
14 Q. Do you know if you've spoken to Paul Kelly
15 about this case?
16 A. I don't know at this point.
17 Q. Do you know who State Trooper Anthony
18 Tobolski is?
19 A. I know who he is, I've never met him.
20 Q. Have you spoken to him --
21 A. I have not.
22 Q. -- about this case?
23 A. Not that I'm aware of.
24 Q. Do you know Anthony Cornetto?
25 A. I know who he is, I don't believe I've ever

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1   Dr. Vigilante - Direct
2   met him.
3 Q. Gotcha. And so having not met him, I'm
4   assuming you haven't spoken to him either about
5   this case?
6 A. About this case, I have not.
7 Q. Have you ever had a case with Mr. Cornetto
8   before?
9 A. Not that I'm aware of. You mean were we
10 working for the same party?
11 Q. In the same case.
12 A. I don't recall. It's possible, I just
13 don't recall.
14 Q. Understood. Do you know who Marianne
15 Gardner is?
16 A. Oh, I do know who she is, I've never talked
17 to her.
18 Q. Gotcha. Do you know how many times you --
19 A. Correct that.
20 Q. Sorry. Go ahead.
21 A. I'm not aware of ever speaking with her.
22 Q. Do you know how many times you've spoken to
23 Paul Blumenthal about this case?
24 A. I have to hazard a guess.
25 Q. Okay. Sure.

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1   Dr. Vigilante - Direct
2 A. Over a dozen.
3 Q. Do you know the last time you spoke to him
4   about this case?
5 A. The last time, I'd say within six months.
6 Q. Do you know --
7 A. (Indicating.)
8 Q. Sorry. Go ahead.
9 A. Yeah. I don't know that we discussed the
10   case other than where it was at and its
11   scheduling. I don't know if we -- I don't believe
12   we discussed my opinions or any additional work or
13   anything like that.
14 Q. Understood. Do you know how many times
15   you've spoken with someone from Miller & Zois
16   about this case? And when I mean, "someone," an
17   attorney about this case.
18 A. Less than a dozen times.
19 Q. Do you know the most recent not having to
20   do with your deposition here today?
21 A. I don't recall.
22 Q. Let's talk briefly about today's
23   deposition. What did you do to prepare for today?
24 A. One of the things I did was to talk to
25   Justin from Miller & Zois. We met this morning.

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1   Dr. Vigilante - Direct
2 We talked on the phone earlier in the week. I put
3 together my file. I reviewed my report. I
4 reviewed the depositions of the plaintiff and his
5 passenger.
6   I reviewed the report of Mr. Cornetto
7 and Mr. Reuschling. I reviewed the police report.
8 I reviewed the references I cited in my report.
9 (Looks at computer.)
10   I reviewed the crash report overlay.
11 I reviewed my inspection photos and videos from
12 the 13th and the 14th. I looked at the defense
13 interrogatories and the responses, the answers to
14 interrogatories. The request for production of
15 documents, and what is this one?
16   Request for admission of facts and
17 genuineness of documents. I looked at the photos
18 I had of the dump truck. The photos of Mr. Glad's
19 Buick, and the site photos that were taken. I'm
20 not sure offhand who took them, they may have been
21 taken by Mr. Reuschling, I don't know at this
22 moment or I don't recall at this moment.
23   I looked at the three videos taken by
24 Glen Reuschling during our inspection on the 14th.
25 I looked at the ERD data that they retrieved from

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1   Dr. Vigilante - Direct
2 the Glad vehicle. Looked at the police report,
3 the DOT exam. The drug/alcohol test results, and
4 the drug testing slips.
5   And then I looked at the discovery
6 documents from Thomas Pauls, including their job
7 tickets, their driver receipt. Paul's
8 alcohol/drug policy. Their loss wage statement
9 and whatever else was included with that. I
10   looked at Google Earth and Google Maps again of
11   the site.
12   I looked at the distances from the
13   point of impact to the Bay Bridge and the point of
14   impact to the Richmond area. I looked at the
15   depositions of Mr. Cornetto and Mr. Demby,
16   Mr. Cooper, Mr. Reuschling, Trooper Tobolski. And
17   the exhibits attached to Reuschling's and
18   Cornetto's deposition. And I don't recall if
19   there were exhibits to Demby's and Cooper's and
20   Tobolski's deposition, I don't recall offhand.
21   And I think that's it. Did I say I
22   reviewed my report and opinions?
23 Q. No. But you can --
24 A. I did that as well.
25   (Document marked for identification as

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1   Dr. Vigilante - Direct
2 V-6.)
3   MR. AKPAN: Mark, Exhibit 6 are the
4 invoices from Robson Forensic.
5   MR. KOZLOWSKI: Got it.
6   BY MR. AKPAN:
7 Q. Doctor, I'm showing you what I have marked
8 as your deposition Exhibit V-6. Can you take a
9 look at it and tell me if you recognize what they
10   are?
11 A. Yeah. They appear to be invoices from
12   Robson Forensic to Mr. Blumenthal for my work
13   activity related to this case.
14 Q. And --
15 A. And to correct the record. It looks like I
16   did put that trial history together back in April
17   of 2015 because I billed for it.
18 Q. Now, you listed for me a lot of the
19   documents and things that you did to prepare for
20   today. And I'm assuming you haven't invoiced them
21   yet for that work?
22 A. I have not.
23 Q. The last invoice I have or that's there for
24   Robson Forensic is for the trial history from
25   April 30th, 2015. Do you know if you did any work

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1   Dr. Vigilante - Direct
2 between April, 2015 and before you prepped for
3 today's deposition?
4 A. Yes and no. So some of the documents I
5 looked at, I wouldn't necessarily say -- well,
6 they were in preparation for the deposition,
7 because if I didn't have the deposition scheduled,
8 I wouldn't have realized I didn't have them.
9   So then I asked for them and was
10 provided them and then I reviewed them. But I
11 would have reviewed them even if there wasn't a
12 deposition and I had been aware of them, and that
13 the case was still going on. So that's kind of a
14 yes or no.
15   Prior to, let's say two weeks ago, I
16 don't recall doing any active work on the case,
17 but I can't say for 100 percent sure I didn't.
18 And if I did, it wouldn't have been a lot.
19 Q. Understood. So you don't know if this is
20 the last invoice under Robson Forensic; do you
21 know?
22 A. I don't know.
23 Q. And have you prepared an invoice under
24 Vigilante Consulting?
25 A. I have not yet.

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1   Dr. Vigilante - Direct
2 Q. Let us go to your report.
3 A. (Witness complies.) Okay.
4   MR. AKPAN: And Mark, it's going to be
5 V-7.
6   (Document marked for identification as
7 V-7.)
8   BY MR. AKPAN:
9 Q. Doctor, what I'm showing you is what I've
10 marked as your deposition Exhibit V-7. Do you
11 recognize what that document is?
12 A. It appears to be a copy of my May 20th,
13 2014, report in this matter.
14 Q. Doctor, the opinions that are expressed in
15 that report, are they your current opinions as we
16 sit here today?
17 A. Yeah. I don't think I was asked to provide
18 any additional opinions at this point.
19 Q. Now, do you know if there's anything that
20 you would change in this report based on the new
21 information that you reviewed after May 20th,
22 2014?
23 A. No. I did notice a typo in here though.
24 Q. Where was that?
25 A. Page two. I've got the collision occurred

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1   Dr. Vigilante - Direct
2 at 120 feet north of the J-turn.
3 Q. That was going to be one of my questions.
4 A. Yeah. So that appears to be a typo,
5 because I would have relied upon Glen Reuschling
6 for that. And his is like 200, like low 200s.
7 Q. Gotcha. Okay. Other than that change in
8 the report, is there anything that you would like
9 to amend specifically to your opinions based on
10 the new information that you received?
11 A. I can't think of anything at the moment.
12 Q. And I think you told me --
13 A. Oh, I did receive another document.
14 Q. Okay.
15 A. It was from (looks at computer) -- it was
16 the report of Dr. Ranade, so I forgot to mention
17 that.
18 Q. And do you know the date of that report?
19 A. Yes. One second. It looks like the letter
20 to Mr. Blumenthal is dated August 22nd, 2014.
21   MR. AKPAN: And Madam Court Reporter,
22 Ranade is R-A-N-A-D-E.
23   MR. ZUBER: Yeah. Good.
24   THE REPORTER: Thanks.
25   BY MR. AKPAN:

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1   Dr. Vigilante - Direct
2 Q. And I think you told me that you have not
3 prepared a supplemental report, correct?
4 A. I have not.
5 Q. And have you been asked to?
6 A. No. As of today.
7 Q. As of today. Doctor, let's take a look at
8 the subsection that is entitled, "Introduction."
9 And before we were talking about what you were
10 asked to do and then you referenced these three, I
11 guess, sort of topics that you were asked to
12 investigate.
13   These topics were something that you
14 came up with or were they something that
15 Mr. Blumenthal asked you to address?
16 A. They would have been a collaboration
17 between myself and Mr. Blumenthal as to areas that
18 I would be comfortable opining, areas that I was
19 qualified to opine, and areas that he was
20 interested in me opining.
21 Q. These three topic areas, were they
22 communicated or that collaboration, was that
23 something done at the initial time you were
24 retained or was this -- or sort of tell me when
25 this was discussed leading up to the preparation

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1   Dr. Vigilante - Direct
2   of this report.
3   A.   It would have been early in the
4   investigation.
5   Q.   Then the next question I have for you is
6   why is the first one entitled or referenced,
7   "Determine whether Demby's lane change was
8   improper and violated Glad's reasonable expectancy
9   in a manner which caused the collision"? How did
10   that come about as being the first issue you
11   wanted to determine?
12 A.   Like the first in order? I don't know that
13   it was the first in order but it's just the way I
14   wrote the report because I thought it flowed that
15   way.
16 Q.   I'll ask a better question. Actually I'll
17   get back to that later. I'll get back to that
18   later. Let's go to materials available for
19   review, okay.
20   You gave me a list of additional
21   documents that you had reviewed, so I don't have
22   to ask you about those. One of the things I don't
23   know if you mentioned was did you review S-E-A's
24   supplemental report from February of this year?
25 A.   Yes. I reviewed a supplemental report, let

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1   Dr. Vigilante - Direct
2   me check the date. Yep. February 6th, 2017.
3   Q.   Did you see Mr. Cornetto's simulation video
4   of the accident?
5   A.   I have not seen the video, just the
6   photographs that were attached or put into the
7   report.
8   Q.   And you mentioned that you had seen the
9   videos that Mr. Reuschling made about the model
10   dump truck, that array, that turning lanes? Him
11   turning, making that J-turn?
12 A.   Are you talking about the ones that he
13   recorded at the site?
14 Q.   Yes.
15 A.   Yes. I did see those videos.
16 Q.   Have you seen Glen's animation video of
17   this accident?
18 A.   I don't believe so.
19 Q.   And other than the August 22nd, 2014, I
20   guess report from Dr. Ranade, have you reviewed
21   any of Mr. Glad's medical records?
22 A.   Yeah. I don't recall reviewing any other
23   medical records from Mr. Glad. The only things I
24   can think of if there were any exhibits to, oops,
25   the -- (looks at computer.)

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1   Dr. Vigilante - Direct
2   Q.   Depositions or something like that?
3   A.   Yeah. Specifically of the EMT that
4   arrived, the off-duty EMT that arrived,
5   Mr. Cooper. I'm not seeing any exhibits attached
6   to his deposition. At this point, I don't recall
7   seeing any other -- any additional medical records
8   for Mr. Glad.
9   Q.   Let's turn to Subsection C of your report,
10   the description of the collision and site
11   conditions.
12 A.   Okay. (Witness complies.)
13 Q.   We already corrected at the bottom of page
14   two about the collision occurring at 120 feet.
15   You're saying now relying on Glen's report, that
16   it's somewhere in the low 200s, correct?
17 A.   Yeah. I would have relied on Glen
18   Reuschling to determine the point of impact.
19 Q.   But that statement continues that the
20   collision occurred in the right travel lane. What
21   evidence are you relying on that the collision
22   occurred in the right travel lane?
23 A.   I'm relying upon Glen Reuschling to
24   determine the travel lane. But I will say it's
25   consistent with Mr. Glad and Mr. Reuschling's

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1   Dr. Vigilante - Direct
2   deposition testimony but specifically I'm leaving
3   opinions with regard to location of the collision
4   and the location relative to the lanes and the
5   J-turn to Mr. Reuschling.
6   Q.   So I'll take that part and say that you're
7   relying on Glen's report for the location of the
8   accident but you also said that it's consistent
9   with, at least your recollection, of what Mr. Glad
10   and Mr. Borycens testified to, correct?
11 A.   Yeah. They both testified that Mr. Glad
12   was traveling in the right lane with his cruise
13   control on.
14 Q.   Gotcha. And so that's why you believe it's
15   consistent with their testimony?
16 A.   Yes. The other thing I'll note too is the
17   police report has it occurring in lane two as
18   well.
19 Q.   Okay.
20   (Document marked for identification as
21   V-8.)
22   BY MR. AKPAN:
23 Q.   Before I show you Exhibit 8. Doctor, do
24   you know where in the right travel lane the
25   accident occurred?

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1   Dr. Vigilante - Direct
2 A. Do you mean laterally or do you mean like
3   longitudinally?
4 Q. Both.
5 A. Both? I'm relying upon Mr. Reuschling for
6   those determinations. So I note what he notes in
7   his report, but beyond his analysis, I haven't
8   done my own.
9 Q. Is there any particular reason why you're
10   relying on Mr. Reuschling's determination as
11   opposed to Mr. Cornetto's?
12 A. I wasn't asked to rely upon Mr. Cornetto's
13   and I didn't rely upon Mr. Cornetto's.
14 Q. When you say you were not asked to, what do
15   you mean by that?
16 A. Well, I assumed that Mr. Reuschling's
17   analysis was correct.
18 Q. And are you making any assumptions about
19   Mr. Cornetto's determination or you weren't asked
20   to?
21 A. I wasn't asked to critique his report with
22   regards to those issues.
23 Q. Doctor, I'm showing you what is marked as
24   your deposition V-8. I want you to take a look at
25   that and tell me if you recognize what it is.

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1   Dr. Vigilante - Direct
2 A. It appears to be a copy of the State of
3   Maryland Motor Vehicle Accident Report for this
4   collision.
5 Q. Yes. And if you turn to page three of your
6   report under, again, the heading, "Description of
7   the collision and site conditions," I note that
8   you reference the police report and that Glad
9   stated that it says that, "Glad stated that he
10   fell asleep."
11   Is there any reason why you didn't
12   include in your report that Glad's passenger also
13   stated that he must have fallen asleep? It didn't
14   include that reference, is there any reason why?
15 A. I don't recall there being a reason.
16 Q. Let's turn to Subsection D, the analysis.
17 A. (Witness complies.) Okay.
18 Q. And the first, I guess, D-1 is, "Demby's
19   improper lane change was a violation of Glad's
20   reasonable expectancy." Tell me what you mean by
21   improper lane change.
22 A. Well, it's my understanding that Mr. Demby
23   went from the J-turn in the median, crossed into
24   the left travel lane and then changed or moved
25   into the right travel lane without providing

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1   Dr. Vigilante - Direct
2   Mr. Glad with the time and distance he needed to
3   safely change his path and speed. And it's my
4   understanding that Mr. Demby had a responsibility
5   to ensure that when he was pulling out, that he
6   didn't cause any disturbance in the traffic flow
7   of the vehicles approaching.
8 Q. When, in terms of at least your
9   understanding of how this accident happened and in
10   particularly, the reference to an improper lane
11   change, are you assuming that after Mr. Demby made
12   that J-turn, that he fully established his vehicle
13   north and south in the left lane, lane one, as
14   part of your conclusion about an improper lane
15   change?
16 A. That he was perfectly north and south?
17 Q. Not perfectly north and south but had
18   established himself traveling north in lane one.
19 A. At some point, yes. In the left lane.
20 Q. And what facts are you relying on to
21   support that assumption or that conclusion?
22 A. I'm just relying upon Mr. Reuschling's
23   investigation.
24 Q. I understand. Aside from Mr. Reuschling's
25   investigation, what facts or other things, because

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1   Dr. Vigilante - Direct
2   and I'll clarify. I will reference
3   Mr. Reuschling's investigation as an expert report
4   and/or opinion. I'm taking a step back from an
5   ultimate conclusion of a report.
6   I'm talking about the underlying facts
7   that something will be based on or a conclusion
8   will be based on. That's where I'm going to. So
9   I'm looking for where in deposition testimony,
10   where in statements made by any of the drivers or
11   passengers involved that indicate that Mr. Demby
12   was established in lane one after he made the
13   J-turn?
14 A. Yes. So I think there's a little bit of
15   confusion. I wasn't asked to determine if or what
16   his path was to the point of impact. I'm allowed
17   to rely upon Glen Reuschling's analysis and
18   opinions as a basis for extending mine.
19   So I didn't go into the fact pattern
20   and do my own investigation. I relied upon
21   Mr. Reuschling's investigation and opinions to
22   determine what he believed to a reasonable degree
23   of his engineering certainty or whatever certainty
24   that he uses, as to what occurred.
25   Taking that assumption, my opinions

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1   Dr. Vigilante - Direct
2   are that that was an improper lane change that
3   violated Mr. Glad's reasonable expectancy. Now,
4   as I mentioned earlier, aside from that, there's
5   consistency with the testimony of Mr. Glad and
6   Mr. Borycens.
7 Q.   And the consistency in that testimony is
8   that they were traveling in the right lane?
9 A.   Yes.
10 Q.   And based on your review of Mr. Glad's
11   testimony, do you believe he testified that
12   Markeith Demby changed lanes from lane one to lane
13   two into the path of his vehicle?
14 A.   He testified he doesn't recall seeing him.
15 Q.   With respect to his passenger,
16   Mr. Borycens, is it your recollection that he
17   testified that Mr. Demby's vehicle changed lanes
18   from lane one into lane two?
19 A.   I don't believe Mr. Borycens testified that
20   he recalled seeing Demby either.
21 Q.   I know you read Mr. Demby's deposition. Is
22   it your recollection of his testimony that he
23   testified that he fully established himself into
24   lane one and changed lanes into lane two?
25 A.   No. He testified that he went over into

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1   Dr. Vigilante - Direct
2   the shoulder and came back into the right lane.
3   He also testified that Glad was in the left lane.
4 Q.   Understand. And I think you've already
5   said that your conclusion about sort of how this
6   or your opinions about the improper lane change
7   and sort of throughout your report are based on at
8   least -- are based on Glen Reuschling's version of
9   how or the path of Mr. Demby's vehicle; is that
10   fair to say?
11 A.   Yeah. If you look on page six, I give a
12   recitation of what Glen Reuschling concluded with
13   regards to the collision. And taking that as my
14   working assumption, that's how, in part, I got to
15   my opinion.
16 Q.   And if Glen Reuschling's conclusion about
17   how --
18 A.   I'll take another one. Demby also
19   testified that he didn't signal that he was moving
20   into the right lane.
21 Q.   My question, Doctor, is if Glen
22   Reuschling's summation or conclusion about the
23   path of Mr. Demby's vehicle is incorrect, would it
24   then or how would that affect your opinions in
25   this case?

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1   Dr. Vigilante - Direct
2 A.   I'd have to look at it.
3 Q.   Doctor, let's talk about expectancy, okay.
4   Is it a fair statement that expectancy, when we're
5   talking about human factors, relates to a driver's
6   readiness to respond to situation, events and
7   information predictable -- in predictable and
8   successful ways?
9 A.   Sure.
10 Q.   And --
11 A.   Sounds like something I wrote.
12 Q.   It is. And I think one of the references
13   that you cite in your report talks about two types
14   of driver expectancies: One that is long-term or
15   apriority and --
16 A.   Yes. I'm sorry. I thought you were --
17 Q.   I'm sorry. No problem. No problem. One
18   that is long-term or apriority and another one
19   that's short-term called, "Ad hoc"?
20 A.   Yes.
21 Q.   And to summarize. Long-term, a long-term
22   drive expectancy is one which the driver brings to
23   the task of driving?
24 A.   Well, it's --
25 Q.   Based --

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1   Dr. Vigilante - Direct
2 A.   It's developed over time.
3 Q.   And so sort of that long-term driver
4   expectancy is based on sort of -- well, you tell
5   me. What makes a long-term driver expectancy?
6 A.   Well, in the way we're dealing with it in
7   the driving environment, it's based upon the
8   things that are formalized in the driving
9   environment, whether they be the traffic control
10   device standardization. Whether they be the
11   standardization of rules of road. Whether they be
12   the standardization of proper driver behavior as
13   noted in the different driver manuals.
14   And then consistently experiencing the
15   application of those rules and guidelines and
16   procedures over time builds the apriority
17   expectations. So it's something that develops
18   over time based upon consistent experience in
19   repetition with the same or similar types of
20   environments, events and actions.
21 Q.   And what are short-term or what is
22   short-term driver expectancy?
23 A.   Ad hoc expectancy are things that are
24   site-specific. So an example of an ad hoc
25   expectancy is if I'm traveling on a windy road and

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2   the curves are preceded by a curve ahead sign, I
3   will expect both from apriority and ad hoc that
4   all future curves that are along this particular
5   stretch of roadway will be preceded by a curve
6   ahead warnings. So that's an ad hoc expectancy.
7   The ad hoc is built upon the apriority
8   that's a general expectancy that dangerous or
9   hazardous roadway conditions are warned or signed
10 ahead of time by experiences on that road suggests
11 that it's going to continue. Now, the reverse of
12 that is if I'm on a windy road and the curves are
13 not signed, I will develop an ad hoc expectancy
14 that there could be curves in the future on that
15 road, shortly in the future on that road that
16 won't be signed either.
17 Q. The expectancy that you're referencing in
18 D-1, sort of Demby's improper lane change was a
19 violation of Glad's reasonable expectancy, is that
20 in relation to his long-term driver expectancy,
21 his short-term driver expectancy or none of the
22 above?
23 A. It's apriority, so it's long-term.
24 Q. Gotcha. Okay. And explain how Demby's
25 improper lane change violated that apriority

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1   Dr. Vigilante - Direct
2   expectancy.
3   A. Yeah. Well, that's what I have in the
4   report. That drivers are required to signal their
5   intention before lane changing. They're required
6   to provide drivers with sufficient time and
7   distance before they move over.
8   Typically drivers are instructed to
9   pull, if they're going to pull into a situation
10 like this, into the lane closest to where they're
11 coming out of, not the far lane.
12   So it's the expectation based upon the
13 overall rules and the standardization of rules and
14 guidelines and policies that a driver is not going
15 to come from the J-channel -- J-turn or the median
16 and pull into the far right lane or shoulder; that
17 they're going to pull into the left lane.
18   And if they're going to pull into the
19 left lane, that they're going to stay there until
20 they have enough time and distance to safely move
21 to the right. And that before they move to the
22 right lane, that they're going to provide a turn
23 signal, an indication that they're going to move,
24 so that the driver approaching behind can see what
25 their intentions are and then have the time and

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1   Dr. Vigilante - Direct
2   distance to respond. So with Demby moving over
3   into the right lane without signalling and without
4   sufficient time and distance to avoid it, that was
5   contrary to established rules, procedures,
6   policies which then therefore is a violation of
7   the expectancy that's built upon those rules,
8   policies, guidelines, et cetera.
9   Q. Doctor, probably an hour ago or so when we
10 were talking about human factors generally and I
11 think we probably were also discussing sort of
12 vision and driving, I think you said, and correct
13 me if I'm wrong, maybe you said the driving task
14 is 90 percent visual or you gave me some 90
15 percent number; do you remember talking about
16 that?
17 A. Yes.
18 Q. How does vision impact expectancies in
19 general, long-term expectancies and short-term
20 expectancies?
21 A. No. You have it backwards.
22 Q. Okay.
23 A. So the expectancies affect visual
24 perception, visual performance. So I think I list
25 them in the report. So for example, the

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1   Dr. Vigilante - Direct
2   likelihood of detecting a hazard or hazardous
3   event is decreased when you violate expectancy
4   because you're not looking for it.
5   A dump truck ahead of me in the left
6   lane with its turn signal on, I'd start looking at
7   the dump truck and seeing what he was doing so if
8   he did move over into the right lane, at least I
9   had some forewarning of what his intentions were.
10 So expectancy is going to result in me tracking
11 him, keeping an eye on him.
12   If he's got no turn signal and I'm
13 expecting him to stay in the left lane, my
14 attention is going to be focused on the roadway
15 beyond him. So now you're going to have to detect
16 his movement into your lane from peripheral vision
17 which is going to be more difficult than if it was
18 in central vision.
19   So that's an example of how expectancy
20 can affect visual performance or vision related to
21 the driving task.
22 Q. And I apologize. Can you tell me again
23 what you said expectancies related to peripheral
24 vision and central vision again?
25 A. Well, it doesn't relate directly. What it

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2   relates to is the fact that if you believe the
3   truck is going to stay where it's at, you're going
4   to be not worried about it, all right. So you're
5   not going to be focused on it.
6   And if you're not focused on it, it
7   means the truck is going to appear in peripheral
8   vision assuming that you're looking somewhat
9   forward. If you check, you, of course, if you
10   check your right mirror as you're approaching the
11   truck to check for traffic behind you, which is
12   what you're required to do periodically as a
13   reasonably attentive driver, and that truck moves
14   over, it's not going to be in your peripheral
15   vision; it's going to be outside of your
16   peripheral vision because your head's turned.
17   So that's another example of how
18   expectancies affect visual performance. If you're
19   not looking in the direction of the hazard because
20   you don't know it's going to be a hazard, you're
21   not going to see it when it becomes a hazard.
22   If you're looking forward, your
23   central -- and you're not expecting him to be
24   coming over, you're likely to be looking beyond
25   him. So your central vision is going to be to the

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1   Dr. Vigilante - Direct
2   right of the truck. It's going to be farther down
3   the road. So any movement that the truck does is
4   going to be in peripheral vision.
5 Q. Understood. So is it fair for me to
6   construct it this way, that under the umbrella of
7   the driving task, okay, that expectancies that
8   we've discussed affect your, I don't want to say
9   vision but it implicates what you will be
10   reasonably expected to see at a certain time; is
11   that?
12 A. Well, that can. So for example, on an
13   unlit road at night, if you expect to see a
14   pedestrian in the roadway, you're going to be able
15   to see them at about maybe 50 to 100 percent
16   greater distance. If you're not expecting them,
17   you've got to be much closer before you're able to
18   predict them.
19   So that's an issue of how expectancy
20   affects visual detection or the detection part --
21   I want to clarify. Vision perception, you know,
22   is different than sensation. So sensation is
23   actually having the stimulus trigger your rods and
24   cones to send a signal to the brain.
25   Once it gets into the brain, your

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2   brain starts to make sense of that, so it starts
3   giving it meaning. So that's your perception,
4   okay. So expectancy affects both the likelihood
5   of detecting, but more importantly, the likelihood
6   of perceiving it.
7   So perceiving then gets into not only
8   realizing it's there, but giving it a pattern and
9   giving that pattern an understanding of what it
10   is.
11 Q. Understood.
12 A. Okay. So in cases where the visual
13   conditions are not ideal, so nighttime fog, rain,
14   what have you, where your ability to capture that
15   stimulus through your eye senses, through your
16   eyeballs or through your retina, through the
17   cones, through the rods, that is affected by
18   expectancy. But then the ability to realize that
19   there's something there and put a pattern to it
20   and to identify that is also affected by
21   expectancy.
22   And then of course, if you misidentify
23   it because you were expecting something else and
24   you perceive it as that something else because
25   that's the way you expected to find it, it's going

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1   Dr. Vigilante - Direct
2   to affect your decision-making, because now you're
3   going to make a decision based upon an incorrect
4   identification.
5 Q. Gotcha. So to sum up, because I was trying
6   to understand it in a little bit shorter way than
7   you just stated it, but expectancy affects your
8   visual detection. Can affect the way that your
9   perception of the event, and then could also
10   affect down the line how you react to it?
11 A. The way I like to explain it and probably
12   the easiest way --
13 Q. Yep.
14 A. -- is to put it in terms of
15   perception-reaction time, okay. So in the driving
16   environment, because most of the information we
17   collect from the roadway is visual, that's what
18   we'll deal with: Visual perception,
19   perception-reaction time as it relates to the
20   collection of visual information.
21   So expectancy can affect the detection
22   part of that, okay. Perception -- let me back up
23   again. Perception-reaction time generally
24   consists of four different processes, four
25   different stages.

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2   Detection. If I don't detect it, I
3   can't respond to it. Identification. Once I
4   detect it, now I have to identify what it is, what
5   it's doing, what it's likely to do, is it a
6   hazard, can it be a hazard, et cetera.
7   Once I've identified it, whether I've
8   identified it correctly or incorrectly, I'm going
9   to make a decision. The decision is going to
10   affect what I do with respect to my reaction. Do
11   I continue doing what I'm doing. Do I change it.
12   So for example, do I hit the brakes.
13   Do I change lanes. Do I steer, swerve, et cetera.
14   And then we react. Reaction is the implementation
15   of that decision.
16   So expectancies affect the detection.
17   So whether or not we're likely to detect it and
18   how close or how far away we are when we detect it
19   is affected by expectancies. How we identify it.
20   How we identify what it is, what it's doing, what
21   it's going to do, whether it's a hazard, whether
22   or not it's going to be a hazard is also affected
23   by expectancies. Okay.
24   And then based upon what we identify,
25   we make a decision. So if we misidentify, we're

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1   Dr. Vigilante - Direct
2   going to have incorrect and insufficient
3   information, incorrect and/or insufficient
4   information to make a decision. So we're going to
5   respond. We're going to make a decision based
6   upon our identification which is in part based
7   upon expectancy, and we're going to react to
8   whatever our decision is, which is based upon the
9   identification, which is based upon the expectancy
10   in part. So that's how it all relates.
11 Q. Understand. Doctor, probably more than an
12   hour ago we were -- I talked to you about diseases
13   of the eye --
14 A. Sure.
15 Q. -- and how that affected the driving task
16   and sort of visual perception of an event. Would
17   you agree with me that depending on the
18   significance of the disease or the particular
19   disease of the eye, that that can also affect
20   one's ability to detect under that rubric of what
21   we were talking about how expectancy affects
22   perception and reaction time?
23   MR. ZUBER: Well, objection to the
24   extent that you know medically how it could
25   affect perception and vision.

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1   Dr. Vigilante - Direct
2   THE WITNESS: Well, we can talk about
3   macular degeneration because I think that's the
4   potential vision issue Mr. Glad was dealing
5   with --
6   BY MR. AKPAN:
7 Q. I wouldn't assume that but...
8 A. Okay. Well, we'll say macular
9   degeneration, glaucoma, cataract, whatever can
10   potentially affect visual performance; it can have
11   an effect on detection. So again if your, say for
12   example, you wake up one morning and your vision
13   is cloudy. Maybe you've got a head cold, maybe
14   you took some Sudafed or something, I don't know.
15   It's going to impact detection, okay.
16   So that you're going to take longer.
17   You're going to need to be closer. It's going to
18   have to be brighter/bigger for you to detect it
19   relative to clear vision. Now, the problem with
20   that is, is that there's an interaction, again,
21   with expectancy.
22   Because now if your expectancy is
23   violated, it's going to be even more difficult to
24   detect that object, event or hazard because you're
25   not looking for it. If you're expecting it, you

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1   Dr. Vigilante - Direct
2   can attend and or you can shift more resources
3   into detecting the object. And this is the same
4   thing that happens, for example, at night.
5   One of the examples I like to give is
6   when you get up in the middle of the night and
7   you've got to use the restroom and you're in your
8   own room, you pretty much get up in the dark, make
9   your way around the corner of the bed, maybe
10   you've got a dresser there, weave your way into
11   the bathroom successfully and safely.
12   As you're doing that, the objects in
13   the room, you can get a feel for where they are.
14   Your vision is going to pick them up and it's
15   going to be a very light stimulus. But because
16   you know what's there and you're expecting it
17   there, your mind puts a pattern to that very light
18   stimulus.
19   When you're in the hotel room and you
20   wake up at 3 o'clock in the morning and you stub
21   your toe on the end of the bed or excuse me.
22   Maybe there's a dresser or your suitcase is at the
23   end of the bed, as you're walking to it, you don't
24   see it.
25   When you hit your foot on it, you're

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1   Dr. Vigilante - Direct
2   likely to actually to see what you just hit and
3   then you, you know, there's usually an expletive
4   involved and then you go on about your way.
5   What's happening is, is that you have this very
6   light stimulus because it's dark. So your eyes
7   are not getting a lot of input.
8   You're not familiar with the room, so
9   you don't really have any of these expectancies
10 that are built in to help give identification to
11 that light stimulus. Once you hit your toe, then
12 you remember, damn, that's my bag. Now your brain
13 puts a pattern to the light stimulus that your
14 eyes are receiving and now you can see it.
15   So the same thing happens with the
16 cloudy vision is if you're expecting it, your
17 brain can give an identification to the pattern
18 for that light stimulus that's coming through. If
19 you don't expect it, that light stimulus coming
20 through, because of the cloudy vision, your brain
21 can't put a pattern on it because it doesn't know
22 what it is, it just thinks it's noise.
23 Q. What do you mean when you say if your
24 brain's expecting it with respect to cloudy
25 vision; expecting what? That your vision will be

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1   Dr. Vigilante - Direct
2   cloudy?
3 A. No. It could be anything. So it could be
4   anything. If you've got cloudy vision and you're
5   expecting to see the dresser on the far side of
6   the room, assuming there's some light coming
7   through to the back of the retina, when your
8   perceptual process, that's the brain part, when
9   the brain perceives that stimulus coming through,
10 it could put a pattern on it. And say, oh, yes.
11 That's my dresser.
12   If I'm in an unfamiliar room and I
13 wake up with cloudy vision, assuming the same
14 amount of light is coming through from that
15 dresser, your brain is going to see -- you're just
16 going to detect some light coming through. Some
17 stimulus is out there, but it's not going to have
18 a pattern to put on it; therefore, it may dismiss
19 it as noise or it may identify it as something
20 else. Maybe, you know, maybe a person or the
21 door.
22   So that's how the expectancy affects
23 the ability of your brain to put a pattern on the
24 stimulus that comes in. You remember, the
25 stimulus comes in, it hits the back of the eye and

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1   Dr. Vigilante - Direct
2   the rods and cones fire. They go to other neurons
3   that fire. All it is, is signals. It's just
4   signals coming in.
5   The perceptual process is your brain's
6   putting a pattern to those signals and it's giving
7   meaning to those signals. If it doesn't expect
8   the object, it has a hard time putting the meaning
9   on it. If it expects it, it's an easier time
10 putting a meaning on what those signals are.
11 Q. I understand. To add to that. If someone
12 is suffering from an eye disease, would that
13 create a longer perception time for the brain to
14 pick up that stimulus?
15 A. It could. And if it's not expected, it
16 becomes even longer.
17 Q. Understood. Depending on the severity of
18 the eye disease, could that affect the
19 identification sort of prone in that perception
20 protocol that you discussed?
21 A. It can. And it's going to be more
22 difficult with the violation of expectancy.
23 Q. And would, depending again on the severity
24 of the eye disease, could it affect or impact the
25 decision-making process in the perception rubric

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1   Dr. Vigilante - Direct
2   that you discussed?
3 A. If the stimulus, whether it be an object or
4   hazard, what have you, is misidentified and/or not
5   detected, it can certainly affect decision-making.
6 Q. And can an eye disease, depending again on
7   the severity, affect the reaction time in that
8   perception rubric that we were discussing?
9 A. It can.
10 Q. And Doctor, sitting here today, do you know
11 the medical status or the status or what sort of
12 eye problems, if at all, that Robert Glad was
13 suffering from at the time of this accident?
14 A. I think he testified that he had slight or
15 some macular degeneration in the left eye or at
16 least was diagnosed with it.
17 Q. That was your understanding when you wrote
18 this report?
19 A. Yes, I believe so. Because I had his
20 deposition at the time.
21 Q. Do you know if your report references
22 anything about Mr. Glad's macular degeneration?
23 A. It does not.
24 Q. Is there a particular reason why?
25 A. Because there's nothing in the report that

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1   Dr. Vigilante - Direct
2   suggests that it was affecting his driving.
3   Q. In which report?
4   A. I'm sorry. There's nothing in the evidence
5   that suggests that it was affecting his driving.
6   Q. I understand that. And the evidence you're
7   talking about would be evidence that does not
8   contain his medical records?
9   A. What I'm talking about is that there's no
10   testimony that there were any problems driving
11   from Florida up to Route 301 and Massey-Galena
12   Road. There were no problems driving back and
13   forth on prior occasions.
14   That there was no problem or an
15   indication from his doctor that there was a need
16   to stop driving or to practice or implement any
17   additional cautions. So I didn't see any evidence
18   at the time to suggest that it was a problem.
19   Q. Understood. If you did see evidence of
20   that sort, would it affect your opinions in this
21   case?
22   A. It could. Possibly. I'd have to see it.
23   Q. In terms of the, and taking you back to
24   when we were discussing an hour ago and it was
25   probably right at the beginning of the deposition,

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1   Dr. Vigilante - Direct
2   I was asking you about sort of the demographics
3   and the studies and the systems that you do and
4   whether or not you go and you're taking sort of a
5   mean or bell curve over the population to sort of
6   -- to apply certain things and expectations with
7   reaction time and those sorts of things. Do you
8   remember us discussing that?
9   A. I remember discussing normal or standard
10   curve.
11   Q. Yeah. For this report, were you relying on
12   the normal and standard curve for Glad's ability
13   to perceive, his perception? His visual
14   perception?
15   A. I assumed that he had normal visual
16   perception; that there was nothing abnormal about
17   it. So he was within the 95th percentile of adult
18   drivers. You want to take a break for a little
19   bit? We've been going on for a little.
20   Q. Sure.
21   MR. ZUBER: Yeah. Sure.
22   (Brief recess.)
23   (Mr. Kozlowski is not on the phone.)
24   BY MR. AKPAN:
25   Q. We're back on. Doctor, let's talk about

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1   Dr. Vigilante - Direct
2   your conclusion number two.
3   A. Okay.
4   Q. And that is D-2 on your report. And it
5   says, "Demby deprived Glad of time and distance he
6   needed to safely avoid the collision." And I know
7   that leads into some of the things that we've
8   already been talking about; is that fair to say?
9   A. A little bit, yeah.
10   Q. In particular, I wanted to ask you about
11   perception-reaction time in general. I know
12   you've referenced it before, but can you just talk
13   about it one more time?
14   A. Yeah. Perception-reaction time is the time
15   it takes to detect, identify, determine a choice
16   of action and initiate a response to a roadway
17   event, hazard or situation.
18   Q. And that was, it was perception-reaction
19   time where you gave us sort of the four things:
20   The detection, identification, decision and
21   reaction?
22   A. Yes.
23   (Document marked for identification as
24   V-9.)
25   BY MR. AKPAN:

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1   Dr. Vigilante - Direct
2   Q. Doctor, I am showing you what I have marked
3   as your deposition Exhibit V-9. Do you recognize
4   what is depicted in V-9?
5   A. It appears to be the EDR airbag module
6   download.
7   Q. And in your investigations that you've done
8   with accidents, have you had occasion to review
9   data or airbag module data like that before?
10   A. Yes. I've looked at the downloads before.
11   Q. Now, under the D-2 perception-reaction, I
12   shouldn't call it the perception-reaction time,
13   but under D-2, page seven in particular.
14   A. Okay.
15   Q. You referenced Glen's conclusion about 25
16   miles per hour and that it would have taken Demby
17   approximately 30 to 42 feet or one to two seconds
18   respectfully to move laterally from the left lane
19   to the point of impact in the right lane.
20   And then you wrote, "The one to two
21   seconds that it took Demby to move from the left
22   lane to the point of impact was faster than the
23   perception-reaction time required by a reasonably
24   attentive driver to respond and avoid an
25   unexpected roadway hazard." My question is

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1   Dr. Vigilante - Direct
2   generally what did you mean by that? And if you
3   could or if it impacts that, explain it using the
4   CDR data or the EDR data.
5 A. Well, I don't think EDR data has anything
6   to do with it.
7 Q. That was my first question. First question
8   answered. Then explain to me what you meant in
9   writing that sentence that I read back.
10 A. Yeah. On the pages, on page six I discuss
11   a little bit about what the research shows a
12   reasonable perception-reaction time is for an
13   unexpected event. And that could be anywhere from
14   one-and-a-half to two-and-a-half seconds if not
15   longer depending on the complexity and the
16   expectancy violation that occurs.
17   So if you only have one to two seconds
18   to respond to the event, initiation, and maybe I
19   could back this up a little bit. The initiation
20   of the event is Demby's movement into the right
21   lane.
22   Prior to his movement into the right
23   lane, he's not a threat to Mr. Glad. If he's not
24   a threat to him, there's no reason to be concerned
25   with him. So it's the point at which he moves

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1   Dr. Vigilante - Direct
2   into the right lane and then becomes a threat. At
3   that point, Mr. Glad has to go through the
4   perception-response time.
5   He's got to detect the threat. He's
6   got to identify it. He's got to identify what it
7   is, what it's doing, what it's likely going to do,
8   and what the potential hazards it's going to
9   create. And then he's got to make a decision on
10   what he's going to do: Brake, change lanes,
11   swerve, so forth. And then he's got to initiate
12   that reaction.
13   If he needs a perception-reaction time
14   of one-and-a-half to two-and-a-half seconds but it
15   only takes that truck one to two seconds once it
16   becomes a threat to the point of impact, there's
17   simply no time to respond.
18 Q. So going back to six and then we'll get to
19   seven then. For an unexpected roadway event, the
20   perception-reaction time can be from
21   one-and-a-half seconds to two-and-a-half seconds
22   or longer; is that fair to say?
23 A. Generally the unexpected the -- excuse me.
24   Perception-reaction time to unexpected
25   straightforward event is about one-and-a-half to

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1   Dr. Vigilante - Direct
2   two-and-a-half seconds for a reasonably attentive
3   driver.
4 Q. And when we're talking about that
5   perception-reaction time, we are talking about
6   from zero is perception that's hidden in the back
7   of your eye; fair to say?
8 A. You start with the detection, if you want,
9   starts at, I guess the way you're trying to lay it
10   out. Detection starts at zero point once it
11   becomes detectable.
12   So if you have a, for example, a cloth
13   is pulled away from the object that it's hiding,
14   okay, the moment it's pulled away, the object is
15   now detectable. If at night and we're talking
16   about detection, it's the point at which the
17   pedestrian first becomes detectable to the driver.
18   So if it's 100 feet, prior to
19   100 feet, the object is not detectable; therefore,
20   perception-reaction cannot start. If it's
21   detectable at 100 feet, that's the point at which
22   perception-reaction time starts. Okay.
23   So in this event, Demby's not a hazard
24   to Glad until he crosses into the right lane. So
25   the movement into the right lane is the start of

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1   Dr. Vigilante - Direct
2   detection.
3 Q. And so from zero for the scale of the
4   one-and-a-half to two-and-a-half seconds, the zero
5   is perception, that last figure, whether it's one-
6   and-a-half, two-and-a-half or longer is reaction?
7 A. Yeah. The detection starts at the moment
8   the hazard becomes detectable. The one-and-a-half
9   to two-and-a-half seconds later is the initiation
10   of the reaction.
11 Q. And is there an additional time period from
12   the initiation of a reaction to something that we
13   would see on an EDR data report?
14 A. You mean the actual engagement of the brake
15   --
16 Q. Yeah.
17 A. -- or the actual changes of steering?
18 Q. Yes.
19 A. Typically for steering, it's almost
20   instantaneous. There is little lag for brake
21   depending upon where the foot is. So typically
22   what you would see in an EDR or CDR, depending on
23   what they're calling it, but the airbag module is
24   if the driver has their foot on the accelerator,
25   actively giving it gas, the reaction would count

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1   Dr. Vigilante - Direct
2   when the driver lets off the accelerator. That's
3   the only way we can tell when the reaction
4   started. So there's probably -- there's going to
5   be a delay between let's off the accelerator and
6   actually engages the brake.
7   Here, we don't know that because he's
8   got cruise control. We don't know exactly where
9   his foot was. Okay. We don't know. But it
10 doesn't really matter: He doesn't have enough
11 time to initiate and carry out the braking if he
12 so chose to broke. If he so chooses to brake.
13 Q. Gotcha. This might be a dumb question but
14 we'll do some dumb math and I'll ask you. We
15 shouldn't assume, based on your writing in this
16 report, that he would have needed at least four-
17 and-a-half seconds to react?
18 A. In this situation, I think four-and-a-half
19 seconds is probably near the upper end. Again
20 perception-reaction time is on the standard of the
21 normal curve. There's a median -- there's a mean
22 and then there's 95th, 99 percentiles. The two-
23 and-a-half seconds gets you up to about the 90th
24 percentile.
25   So there is a segment of the

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1   Dr. Vigilante - Direct
2   population, particularly elderly, that are going
3   to take longer just because of the decrements
4   associated with aging. So it's possible with
5   reasonably attentive, older driver may need three-
6   and-a-half, four-and-a-half seconds.
7   Q. I gotcha. The last conclusion that you
8   have here is that the collision is not consistent
9   with Glad falling asleep. Now, I think it
10 probably starts with page eight -- well, no. It
11 starts at seven.
12   You reference several characteristics
13 of a crash that involves a driver falling asleep,
14 saying the crash occurs during the late night.
15 Typically the driver's alone in the vehicle, and
16 that a single vehicle leaves the roadway.
17   (Phone beeps.)
18   MR. AKPAN: Mark, are you there?
19   (No response.)
20   MR. ZUBER: Maybe that was him coming
21 off.
22   MR. AKPAN: You want to just push on?
23   MR. ZUBER: Yeah, that's fine.
24   BY MR. AKPAN:
25 Q. Sorry, Doctor. I'll rephrase it. In

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1   Dr. Vigilante - Direct
2   talking about this collision not being consistent
3   with Glad falling asleep, you referenced some
4   characteristics of crashes involving drivers, I
5   guess, being asleep at the wheel and you
6   referenced crashes occurred late at night; that
7   the driver's alone, and that or a single vehicle
8   leaves the roadway.
9   Doctor, you would agree with me that
10 those characteristics are not the only
11 characteristics of a driver falling asleep in
12 terms of crashes in the roadway, that those are
13 not the outer limits?
14   There's other, you know, you can have
15 a driver fall asleep in a crash where none of
16 those characteristics exist?
17 A. Anything's possible.
18 Q. Is there a particular reason why you choose
19 those three? Are those the three that are most
20 prevalent?
21 A. These are common characteristics of fall-
22 asleep-at-the-wheel-crash. So there are crash
23 characteristics that indicate or lead one to
24 believe that the collision was involved with
25 falling asleep at the wheel.

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1   Dr. Vigilante - Direct
2   There's research that looks at factors
3   that can predict when you're likely to fall asleep
4   at the wheel. And there's also the fact of the
5   matter that pre-collision, you know, pre-event,
6   there are symptoms of the potential for falling
7   asleep at the wheel.
8   So I looked at those three things
9   combined and shown in the report that they're not
10 consistent with what the record and the evidence
11 shows. So before we even get to a fall-
12 asleep-at-the-wheel-crash, there's events that
13 occurred prior to that. Sleepiness doesn't happen
14 instantaneous, it occurs over time.
15   You get drowsy, you get fatigue. And
16 that leads to expression of the risk of falling
17 asleep at the wheel. And these include most --
18 the two most common symptoms are lane drifting,
19 lane deviation and/or speed irregularity.
20   So a driver who's falling asleep at
21 the wheel, this isn't really related to cruise
22 control but just as an aside, can't give a
23 consistent speed. So you get a lot of, you know,
24 the body starts to relax. The muscles in the
25 ankles start to relax, and therefore they let up

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1   Dr. Vigilante - Direct
2 off of the accelerator and the speed goes down.
3 And they realize it and they give it more gas and
4 then they start falling asleep and so forth.
5   Same thing happens with the steering
6 wheel. You're giving input to the steering wheel,
7 you start drowsing. Getting fatigued. Your body
8 starts to relax. You're getting less muscle input
9 into the arms. You stop giving input to the
10 steering wheel. The vehicle starts to drift,
11 okay. This is what you expect to see before a
12 fall-asleep-at-the-wheel event. That didn't
13 happen in this case.
14   There's no evidence whatsoever that
15 that happened in this case. Okay. So then you
16 look at the things that predict a driver being
17 drowsy or falling asleep. And they have to do,
18 you know, assuming that there's not a medication-
19 related issue: You're hopped up on Sudafed for
20 your asthmas or your allergies, but just assuming
21 a normal driver, these are all related to sleep.
22   When you last slept; that is, how long
23 you've been awake. How good of sleep you got, and
24 how long you were asleep for. And when you looked
25 at the testimony, there's nothing to indicate that

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1   Dr. Vigilante - Direct
2 he was at risk for being drowsy driving in the
3 middle of the day. So then you look at the
4 characteristics of the crash. How it occurred.
5 When it occurred. Where it occurred. What was
6 involved.
7   So typically falling asleep at the
8 wheel involves a driver alone in the vehicle. And
9 there's a good reason for that: There's less
10 stimulus. The other passenger can't interact with
11 you. Can't talk to you, can't keep you awake.
12 Can't keep you alert. Can't warn you and say,
13 hey, Bob, you know, you're starting to fall asleep
14 at the wheel. Maybe we should change.
15   Another common characteristic is the
16 fact that the single vehicle leaves the road,
17 okay. We talked about the fact that the muscles
18 relax and steering input ceases and you get the
19 lane drift and you fall asleep, you don't recover,
20 it keeps going.
21   Third, driving for an extended period
22 of time. Mr. Glad and Mr. Borycens just swapped
23 driving, I think, got a map, they said at the Bay
24 Bridge, they swapped driving. From where they're
25 at to the Bay Bridge, it's only about 42 miles or

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1   Dr. Vigilante - Direct
2 42 minutes, so it's not an extended period of
3 driving. When they left in the morning, they left
4 from north of the Richmond area. So they're not
5 even on the road that long.
6   They said they left about 8:00 or 9:00
7 and maybe stopped a few times. To get from where
8 they're going up 301, and I know they -- I think
9 Mr. Glad testified they went up 95 and then cut
10 over to 301, but assuming they left Richmond and
11 immediately got on 301, we're looking at a trip
12 time of three hours. So if they left at 8:00 and
13 the collision occurs a little after 1:00, they had
14 to have stopped several times or at least an
15 extended period of time.
16   So again, it's not like they've been
17 traveling all night. So it's inconsistent with
18 falling asleep at the wheel. The crash occurred
19 early afternoon.
20   The reason why late at night and later
21 in the afternoon are associated with
22 fall-asleep-at-the-wheel-crashes has to do with
23 our circulating rhythm. So our natural body
24 rhythm has two troughs. The major one is in the
25 evening, early morning hours. This is why we

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1   Dr. Vigilante - Direct
2 sleep typically at night unless we're on shift
3 work which screws with our normal rhythm. The
4 other one is later mid-afternoon.
5   Well, this is occurring before that
6 trough. So the characteristics of the crash, the
7 predictors of the crash, and what happened prior
8 to the crash are not consistent with the driver
9 falling sleep at the wheel. And it's also
10 consistent -- not falling asleep at the wheel is
11 also consistent with the testimony of Borycens and
12 Glad.
13   They testified that they were talking
14 in the car. Borycens testified that Glad was, you
15 know, looking straight ahead. His head wasn't
16 lolling or anything like that. So there was no
17 indication that there was any drowsiness, fatigue
18 leading to fall-asleep-at-the-wheel prior to the
19 crash.
20 Q. And I understand your summation why you
21 believe that the sort of underlying factors aren't
22 consistent with, you know, falling asleep at the
23 wheel. How did you wrestle with the result of the
24 fact of the testimony from both Mr. Demby and the
25 trooper that there was communication from both the

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1   Dr. Vigilante - Direct
2   driver and the passenger that he did fall asleep
3   at the wheel?
4   A.   One, Demby has absolutely no idea what was
5   occurring in that vehicle --
6   Q.   I understand that. And I don't -- what I
7   mean with that is how did you resolve or deal with
8   the testimony from those gentlemen that Mr. Glad
9   himself said that he fell asleep?
10 A.   Oh, I don't think that Mr. Glad said he
11 fell asleep. I think the testimony is, is that
12 Mr. Glad may have expressed to the officer that he
13 thinks he may have fell asleep, because you know,
14 he doesn't have an explanation of how the incident
15 occurs.
16   So that doesn't mean he fell asleep,
17 that just -- you know, my understanding is he
18 suffered a traumatic brain injury. He was in and
19 out of consciousness shortly -- when the off-duty
20 EMT arrived shortly after the collision. TBI's,
21 you know, they wreak havoc on short-term memory,
22 that the memory that just occurred. So that
23 specific event memory.
24   So it is very likely that Mr. Glad
25 woke up or came out of consciousness or came into

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1   Dr. Vigilante - Direct
2   consciousness, whatever level he was at, not
3   knowing what the heck just happened and not being
4   able to remember because of the traumatic brain
5   injury. And this is also expressed in the report
6   of Dr. Ricarda.
7   Mr. Borycens testified that he never
8   told the police officer that he fell asleep. He
9   never told Mr. Demby that he fell asleep. He said
10 he didn't know what happened. He said it happened
11 quickly. He didn't know what happened, but he
12 didn't state anything to the cop or to Demby what
13 happened.
14   The police officer testified he spoke
15 to Demby first and Demby told him that they may
16 have fallen asleep. So that may have skewed the
17 police officer's thinking but the officer, I don't
18 think, has a specific memory of Borycens or Glad
19 telling him that.
20   And then we have the EMT that shows up
21 that there's before the police officer that says
22 that Glad's in and out of consciousness and he
23 never spoke to the officer. So there seems to be
24 a lot of inconsistencies in what people are saying
25 happened or saying what other people said

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1   Dr. Vigilante - Direct
2   happened --
3   Q.   Did you know --
4   A.   -- so I can only rely upon what evidence we
5   have, and there's no evidence leading up to it
6   that suggested this is a fall-asleep-at-the-wheel.
7   Q.   What if Mr. Glad was mistaken about it
8   being an issue of him falling asleep? What if he
9   blacked out? Would, my question is, would someone
10 blacking out be all of the characteristics you
11 listed about drowsiness, about a vehicle leaving
12 the roadway, about speed, about night, driving at
13 night, all those incidences, would they be
14 inconsistent with Mr. Glad simply blacking out
15 right before the collision?
16 A.   So you mean like all of a sudden he's up,
17 he's awake and then the next second, he's out for
18 no reason?
19 Q.   A sudden medical emergency.
20 A.   If that happened, then there would be no
21 prior indication of him being fatigued or drowsy
22 or falling asleep at the wheel. It would have
23 been an acute event that just so happened to occur
24 when Mr. Demby moved into the lane and I don't
25 believe in coincidences like that.

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1   Dr. Vigilante - Direct
2   Q.   What if Mr. Glad had a history --
3   A.   Yeah.
4   Q.   -- of blacking out?
5   A.   I haven't seen it.
6   Q.   But going back. We were talking about
7   blacking out and in that context, it wouldn't
8   matter if the crash occurred late at night or
9   early morning?
10 A.   Hypothetically if a driver blacks out for,
11 you know, an unknown medical reason, with no
12 forewarning that the event is going to occur, then
13 I'd have to say it doesn't matter whether it's the
14 morning or evening.
15 Q.   And it wouldn't matter if the driver was
16 alone in the vehicle either?
17 A.   If there's no forewarning to the acute
18 event, then it wouldn't matter.
19 Q.   And it wouldn't matter if it's a
20 single-vehicle collision or a two-car collision?
21 A.   Yeah. Again if it's a blackout with no
22 advanced warning, then it doesn't matter what type
23 of collision it is.
24   MR. AKPAN: I have no further
25 questions.

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1   Dr. Vigilante - Direct
2   MR. ZUBER: I have no questions. As I
3 guess Mark's not on the line anymore. Right? I
4 guess that's it then. We will read and sign.
5   THE WITNESS: Mark, you there?
6 (No response.)
7 (Witness excused.)
8 (Telephonic deposition concluded at
9 1:14 p.m.)
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1   CERTIFICATE
2   I HEREBY CERTIFY that the proceedings,
3 evidence and objections are contained fully and
4 accurately in the stenographic notes taken by me
5 upon the telephonic deposition of WILLIAM J.
6 VIGILANTE, JR., taken on March 10, 2017, and that
7 this is a true and correct transcript of same.
8
9
10
11
12
13
14   _____
15   JOANNE H. GUSLER, RPR and
          Notary Public
16
17
18   (The foregoing certification of this
19 transcript does not apply to any reproduction of
20 the same by any means, unless under the direct
21 control and/or supervision of the certifying
22 reporter.)
23
24
25

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3
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5 WILLIAM J. VIGILANTE, JR.   3
6
7
8
9
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William J. Vigilante, Jr., Ph.D.
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